

982

No. 2689

United States
Circuit Court of Appeals
 For the Ninth Circuit.

ONERATO CHAPPI, Owner of the Gasoline Boat
 "NOE G,"
 Appellant,

vs.

M. COSTA, JOE H. COSTA AND JOHN SILVA,
 Appellees.

Apostles on Appeal.

Upon Appeal from the United States District Court for
 the Southern District of California,
 Southern Division.

Filed

JAN 26 1916

F. D. Monckton,

No. 2689

United States
Circuit Court of Appeals
For the Ninth Circuit.

ONERATO CHAPPI, Owner of the Gasoline Boat
"NOE G,"

Appellant,

vs.

M. COSTA, JOE H. COSTA AND JOHN SILVA,
Appellees.

Apostles on Appeal.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Affidavit of Ownership.....	8
Answer.....	9
Assignment of Error.....	98
Attorneys, Names and Addresses of.....	1
Bond.....	96
Certificate of Clerk U. S. District Court to Transcript of Record.....	101
Conclusions of Law.....	17
Decree, Final.....	19
EXHIBITS:	
Exhibit "A"—Sketch.....	21
Final Decree.....	19
Findings of Fact and Conclusions of Law.....	15
Libel.....	4
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	92
Order Granting Appellant 60 Days' Additional Time to File Apostles on Appeal.....	103
Order Granting Appellant 60 Days' Additional Time to File Apostles on Appeal.....	104
Order Granting Appellant 60 Days' Additional Time to File Apostles on Appeal.....	105
Order that Libel be Amended and that Cause be Put on Calendar.....	14

Index.	Page
Petition for Appeal.....	94
Praeceptum for Transcript of Record on Appeal..	100
Statement.....	2
TESTIMONY ON BEHALF OF LIBEL-	
LANTS:	
COSTA, J. H.....	24
Cross-examination.....	31
COSTA, N. H.....	33
Cross-examination.....	36
Redirect Examination.....	39
Cross-examination.....	40
Recalled.....	86
Cross-examination.....	87
McDRUGAL, HARRY.....	89
Cross-examination.....	91
SILVA, JOHN T.....	40
TESTIMONY ON BEHALF OF RESPOND-	
ENTS:	
BRIGANTE, GERALD.....	77
Cross-examination.....	79
CHAPPI, NOE.....	69
LEVARO, ANTONIO.....	61
Cross-examination.....	66
PELA, DOSA PEO.....	52
Cross-examination.....	55
PEUNA, OSCAR.....	42
Cross-examination.....	45
VERDUGO, MELCADES.....	81
Cross-examination.....	85
Transcript of Testimony.....	23

Names and Addresses of Attorneys.

For Appellant:

CLAUDE C. CHAMBERS, Esq., San Diego,
California.

For Appellees:

Messrs. MARKS P. MOSSHOLDER and C. G.
SELLECK, San Diego, California. [3*]

*In the District Court of the United States, in and
for the Southern District of California, Southern
Division.*

No. 367—CIVIL—S. D.

M. COSTA, JOE H. COSTA and JOHN SILVA,
Libelants,

vs.

Gasoline Power Boat, "NOE G," ONIRATO
CHAPPI, Claimant,
Respondents. [4]

NO. 367—CIVIL.

*In the District Court of the United States, in and
for the Southern District of California, South-
ern Division.*

M. COSTA, JOE H. COSTA and JOHN SILVA,
Libelants,

vs.

Gasoline Power Boat, "NOE G," ONIRATO
CHAPPI, Claimant,
Respondents.

*Page-number appearing at foot of page of original certified Apostles
on Appeal.

Statement.

February 10, 1915: Verified libel was filed and monition issued to the United States Marshal for the Southern District of California.

NAMES OF ORIGINAL PARTIES TO THE ACTION.

Libelants: M. Costa, Joe H. Costa and John Silva.

Respondents: Gasoline Power Boat "Noe G."

Claimant: Onirato Chappi, sole and separate owner of Gasoline Power Boat, "Noe G."

DATES OF THE FILING OF THE PLEADINGS.

February 10, 1915: Filed verified libel.

February 20, 1915: Filed affidavit of ownership.

February 26, 1915: Filed answer of owner and claimant to the libel. [5]

(Statement, Continued.)

ATTACHMENT OF PROPERTY AND PROCEEDINGS THEREUNDER.

February 10, 1915. A motion issued and delivered to the United States Marshal for the Southern District of California.

Said monition afterwards returned into court, with the following return of the United States Marshal:

"In obedience to the within monition, I attached the gasoline boat 'Noe G,' therein described, on the 16th day of February, 1915, and have given due notice to all persons claiming the same, that this Court will, on the first day of March, 1915, (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial

and condemnation thereof, should no claim be interposed for the same.

C. T. WALTON,

U. S. Marshal.

By F. G. Thompson,

Deputy.

Dated February 20th, 1915.”

February 20, 1915: Affidavit of ownership filed by Onirato Chappi, together with an undertaking for release, in the sum of \$2,500, which amount was fixed by stipulation between the proctors for the respective parties.

April 5, 1915: The above-entitled cause came on to be heard on this day, and was heard on this day, and the following 6th day of April, 1915, in the District Court of the United States for the Southern District of California, Southern Division, at the city of San Diego, California, before the Honorable Oscar A. Trippet, Judge of said court. [6]

(Statement Continued.)

April 30, 1915: Filed findings of fact and conclusions of law. Filed Decree.

May 8, 1915: Notice of appeal in the above-entitled cause, by Onirato Chappi, was this day filed. [7]

In the District Court of the United States of America,
in and for the Southern District of California,
M. COSTA, JOE H. COSTA, and JOHN SILVA,
Libelants,

vs.

Gasoline Power Boat “NOE G.”

Libel.

The Libel and Complaint of M. Costa, Joe H. Costa, and John Silva, owners of the gasoline power boat, "L'Etruria," on their behalf, against the power boat "Noe G," her engines, tackle, apparel and furniture, and against all persons intervening for their interest therein, in a cause of collision, civil and maritime, allege as follows:

1st.

That, at all the times herein mentioned, the above-named libelants were residents of the city of San Diego, county of San Diego, State of California, and were the owners of the gasoline power boat, "L'Etruria."

2d.

That the gasoline power boat "Noe G" herein proceeded against, is now within the Port of San Diego, and within the jurisdiction of this Court.

3d.

That on Tuesday, the 3d day of November, A. D. 1914, at 7:45. A. M., a collision occurred between the said power boats "L'Etruria" and "Noe G," between Santa Tomas and China Points, off the coast of Baja California, Mexico, and outside [8] of the three-mile limit; by reason of which said gasoline power boat "L'Etruria" was sunk, together with her engines, tackle, apparel, furniture and provisions, and the effects of her owners were lost as hereinafter set forth.

4th.

That on the day above named, the said gasoline power boat "L'Etruria" was proceeding in a south-

erly direction off the coasts of Baja California, Mexico, bound on a fishing voyage, at about 7:45 o'clock in the morning, in foggy weather; that her crew were properly disposed and employed in their respective duties, and were faithfully attending thereto, with the helm and lookout properly and competently manned.

That at about this time, she made out directly ahead and within a few yards of her, a vessel which afterwards proved to be the said gasoline power boat "Noe G"; that the "L'Etruria" immediately altered her course to starboard, in accordance with the rules of the road; that the said gasoline power boat "Noe G," immediately thereafter altered her course to port, without making any signal, in such a manner that she almost immediately thereafter collided with the power boat "L'Etruria," striking the "L'Etruria" about two feet forward of the chain-plates on the port bow, breaking her timbers and opening up her seams, so that she began to make water so rapidly that it became necessary for the mariners of the "L'Etruria" to leave her, which they at once did. That within five minutes after the said collision, the said "L'Etruria" was sunk in about ninety fathoms of water.

5th.

That the said libellants allege that the collision was in no way due to any fault on the part of the "L'Etruria," which was in all respects carefully managed, but was due to the fault [9] on the part of the "Noe G," in that she did not alter her course to starboard instead of to port, as under the rules

of the road she should have done, and in that she was in other respects improperly and carelessly navigated.

6th.

The libellants further allege that, by reason of said collision, they have suffered damage, through the loss of the said "L'Etruria," her engines, tackle, apparel and furniture, and the loss of her stores, ammunitions and the effects of the owners on board, which were lost, in the sum of twenty-eight hundred and fifty o/c dollars.

All and singular the premises are true and within the admiralty and maritime jurisdiction of this court.

WHEREFORE the libellants pray that process in due form of law, and according to the practice of this Honorable Court may issue against the said vessel "Noe G," her engines, tackle, apparel and furniture, and that she may be condemned and sold to answer for the damages alleged in this libel, and that this Court will hear the evidence, which the libellants will adduce in support of the allegations of the libel, and will enter a decree in favor of the libellants for the above-mentioned damages; and will order the same to be paid out of the proceeds of the vessel "Noe G," together with interest, and the costs of the libellants; and will otherwise rightly and justly administer in the premises.

C. G. SELLECK and
W. J. MOSSHOLDER,
MARKS P. MOSSHOLDER and
RUSK P. MOSSHOLDER,

Proctors for Libelants. [10]

State of California,
County of San Diego,—ss.

John Silva, being first duly sworn, deposes and says: That he is one of the libellants above named; that he has heard read the foregoing libel and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged, on information and belief, and as to those matters, that he believes it to be true.

JOHN SILVA.

Subscribed and sworn to before me, this 8th day of February, A. D. 1915.

[Seal] MARKS P. MOSSHOLDER,
Notary Public in and for the County of San Diego,
State of California.

[Endorsed]: 367—Civil. In the District Court of the United States of America, in and for the Southern District of California. M. Costa, Joe H. Costa, and John Silva, Libellants, vs. Gasoline Power Boat “Noe G.” Libel. Filed Feb. 10, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Marks P. Mossholder and C. G. Selleck, Room 5, 1st Natl. Bank Bldg., San Diego, California, Proctors for Libellants. [11]

*In the District Court of the United States of America,
in and for the Southern District of California,
Southern Division.*

CIVIL No. ——. IN ADMIRALTY.

M. COSTA, JOE H. COSTA, and JOHN SILVA,
Libelants,

vs.

Gasoline Power Boat "NOE G."

Libellee.

Affidavit of Ownership.

State of California,
County of San Diego,—ss.

Onirato Chappi of the city of San Diego, county of San Diego, State of California, being first duly sworn, deposes and says: That he is the sole and separate owner of that certain gasoline power boat known and designated as "Noe G," her engines, tackle, apparel and furniture of any and every nature used in connection with said power boat.

ONIRATO CHIAPPI.

Subscribed and sworn to before me this 19th day of February, 1915.

[Seal] CLAUDE L. CHAMBERS,
Notary Public in and for the County of San Diego,
State of California.

[Endorsed]: Original. Civil. No. 367—Civ. In Admiralty. In the District Court of the United States of America, in and for the Southern District of California, Southern Division. M. Costa et al., Libellants, vs. Gasoline Power Boat "Noe G,"

Libellee. Affidavit of Ownership. Filed Feb. 20, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Crouch and Chambers. [12]

*In the District Court of the United States of America,
in and for the Southern District of California,
Southern Division.*

CIVIL No. ——. IN ADMIRALTY.

M. COSTA, JOE H. COSTA, and JOHN SILVA,
Libelants,

vs.

Gasoline Power Boat "NOE G."

Libellee.

Answer.

Comes now Onirato Chappi, the owner of the gasoline power boat "Noe G," and for answer to libellants' libel and complaint, admits, denies and alleges as follows:

I.

Admits that at all times herein mentioned, the above-named libellants were residents of the city of San Diego, County of San Diego, State of California, and were the owners of the gasoline power boat "El Etruria."

II.

Admits that the gasoline power boat "Noe G" herein proceeded against, is now within the Port of San Diego, and within the jurisdiction of this Court.

III.

Admits that on Tuesday, the 3d day of November, A. D., 1914, at about 7:45 A. M., a collision occurred

between the said power boats "El Etruria" and the "Noe G," between Santa Tomas and China Points off the coasts of Baja California, Mexico. Denies that said collision occurred outside of the three-mile limit, and alleges the fact to be that said collision occurred at one and one-half miles from the coast of [13] Baja California, Mexico. Admits that the "El Etruria" was sunk, but denies that her tackle, apparel, furniture and provisions were lost as hereinafter set forth, and alleges the fact to be that the nets belonging on said boat were saved.

IV.

Admits that on the day above named, the said gasoline power boat "El Etruria" was proceeding in a southerly direction off the coast of Beja, California, Mexico, bound on a fishing voyage at about 7:45 o'clock in the morning. Admits that the weather was foggy. Denies that her crew were properly disposed and employed in their respective duties and were faithfully attending thereto with the helm and lookout properly and competently manned, and alleges the fact to be that her crew were not disposed and employed in their respective duties and were not faithfully attending thereto. That none of the crew of the "El Etruria" were on deck and in charge of the helm and lookout. That the helm was without anyone in charge and no one was on the lookout attending to the duties necessarily incident thereto. Denies that at about this time the "El Etruria" made out directly ahead and within a few yards of her a vessel which afterwards proved to be the said gasoline power boat "Noe G." Denies that the "El

Etruria" immediately altered her course to starboard or altered her course at all in accordance with the rules of the road. Denies that the "Noe G" immediately thereafter altered her course to port without making any signal in such a manner that she almost immediately thereafter collided with the "El Etruria," striking the "El Etruria" about two (2) feet forward of the chain plates on the port bow, breaking her timbers and opening up her seams so that she began to take water so [14] rapidly that it became necessary for the mariners of the "El Etruria" to leave her, which they did do. Denies that within five (5) minutes after said collision, the said "El Etruria" was sunk in about ninety (90) fathoms of water, but alleges the fact to be that the crew of the "Noe G" immediately after discovering the "El Etruria" caused their engines to be reversed and made every attempt possible to avoid a collision, and alleges further that had the crew of the "El Etruria" been faithfully attending to their duties aboard said boat, that no accident would have occurred. Further alleges that immediately after said collision, the crew of the "Noe G" proceeded to take on board the crew of the "El Etruria" and assisted them in taking on board the "Noe G" the nets belonging on the "El Etruria," fastened a line to said "El Etruria," and attempted to tow the said "El Etruria" into port; but owing to the heavy seas they were unable to do so and about an hour and thirty minutes after said collision, the "El Etruria" was sunk.

V.

Denies that the said collision was in no way due to any fault on the part of the "El Etruria." Denies that the said "El Etruria" was carefully managed. Denies that the accident was due to the fault or carelessness on the part of the "Noe G" in that she did not alter her course instead of to port as under the rules of the road she should have done. Denies that she was in other respects, or in any respects, improperly or carelessly navigated and alleges the fact to be that the collision was due to the fault, carelessness and neglect of the crew of the "El Etruria" in not having said crew properly disposed and at their various and respective places of duty; and that the accident was entirely due to the carelessness and negligence on the part of [15] the crew of the "El Etruria" and in no way the fault of the crew of the "Noe G."

VI.

Denies that libellants, by reason of said collision, have suffered damages through the loss of the said "El Etruria," her engines, tackle, apparel and furniture and the loss of her stores, merchandise and effects of the owners which were lost in the sum of Twenty-eight Hundred Fifty Dollars.

And further answering the libel and complaint, alleges the fact to be that the "Noe G" was damaged by said collision due to the fault, carelessness and negligence of the libellants herein as follows, to wit:

Breaking of bow plate of the value of Ten Dollars (\$10.) All and singular the premises are directly and within the admiralty and maritime jurisdiction of this Court.

WHEREFORE, the libellee herein prays that the libellants take nothing by their said action herein, and that this Court will hear the evidence that the libellee will introduce in support of the allegations of his answer, and will enter a decree in favor of the libellee for the above-mentioned damages and for costs herein expended, and will otherwise rightly and justly administer in the premises.

CROUCH & CHAMBERS,

By CLAUDE L. CHAMBERS,

Proctors for Libellee. [16]

State of California,

County of San Diego,—ss.

Onirato Chappi, being first duly sworn, deposes and says:—That he is the owner and libellee above named; that he has heard read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, that he believes it to be true.

ONIRATO CHIAPPI.

Subscribed and sworn to before me this 19th day of February, 1915.

[Seal]

CLAUDE L. CHAMBERS,

Notary Public in and for the County of San Diego,
State of California.

[Endorsed]: Original. Civil No. 367—*Civ.* in Admiralty. In the District Court of the United States of America, in and for the Southern District of California, Southern Division. *M. Costa, et al*, Libellants, vs. *Gasoline Power Boat, "Noe G,"* Libellee.

Answer. Filed Feb. 26, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Rec'd copy of within answer this 25th day of February, 1915. C. G. Selleck, Marks P. Mossholder, Crouch and Chambers, Proctors for Libellee. [17]

[Order that Libel be Amended and that Cause be put on Calendar.]

At a stated term, to wit, the January term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the first day of March, in the year of our Lord, one thousand nine hundred and fifteen. Present: the Honorable BENJAMIN F. BLEDSOE, District Judge.

No. 367—Civil S. D.

M. COSTA et al.,

Libellants,

vs.

Gasoline Power Boat "NOE G," ETC.,

Respondents.

The U. S. marshal for this District having made return herein of process heretofore issued, and this being the return day thereunder, the usual proclamation in admiralty is thereupon made by said U. S. marshal; and it is ordered, pursuant to the stipulation of the parties to this cause, by their advocates of record, on file herein, that the libel in this cause be amended by inserting, in line 3 of page 3 thereof,

after the words, "in the sum of," the following words, to wit, "twenty-eight hundred and fifty," said amendment to be made by the clerk and attested by him with a reference to this order; whereupon, pursuant to the stipulation of the parties hereto, by their advocates of record, on file herein, it is ordered that this cause be put upon the calendar of this court for Monday, the 8th day of March, 1915, to be called at San Diego, California, for the setting of said cause down for final hearing.

[Endorsed]: No. 367—Civil. United States District Court, Southern District of California, Southern Division. *M. Costa, et al., Libellants, vs. Gasoline Power Boat 'Noe G,' etc., Respondents.* Copy minute order amending libel. [18]

At a stated term of the District Court of the United States for the Southern District of California, held at the court-room in the Federal Building in the City of San Diego, County of San Diego, State of California, on the 6th day of April, A. D. 1915. Present: Honorable OSCAR A. TRIPPET.

M. COSTA, JOE H. COSTA, and JOHN SILVA,
Libellants,

vs.

The Gasoline Power Boat, "NOE G."

Findings of Fact and Conclusions of Law.

THIS CAUSE CAME ON REGULARLY to be heard on the 6th day of April, A. D. 1915, Marks P. Mossholder and C. G. Selleck appearing as attorneys

for libellants, and Messrs. Crouch and Chambers appearing as attorneys for claimants herein: and the said cause having been presented before the Court without a jury, and evidence both oral and documentary having been introduced herein on behalf of said respective parties; and said cause having been submitted to the Court for decision; and said Court having duly considered the same, finds the following facts, to wit:

1st.

That the gasoline power boat, "Noe G" was the property of the claimant Onirito Chappi on the 3d day of November, 1914.

2d.

That the gasoline power boat "L'Etruria" was owned by the Libellants, M. Costa, Joe H. Costa, and John Silva.

3d.

That on the 3d day of November, A. D. 1914, at about seven, forty-five o'clock A. M. the said defendants, the gasoline power boat, "Noe G" collided with the gasoline power boat "L'Etruria" off the coast of Baja California, Mexico, between Santa Tomas and China Point, off said coast. [19]

4th.

That at the time of said collision, and for some time prior thereto, the said boats had been running in a fog; that at the time of the collision, and for some time prior thereto, the gasoline power boat, "L'Etruria" had not been blowing her fog-horn; that the lookout on the "L'Etruria" sighted the "Noe G" when the two boats were from forty to

fifty feet apart; that the said "Noe G" was dead ahead of and on a course bearing directly toward the "L'Etruria"; that at the time the lookout on the "L'Etruria" sighted the "Noe G," he immediately ported his helm and went to starboard.

5th.

That the "Noe G" did not sight the "L'Etruria" until she was within from ten to fifteen feet of the said "L'Etruria"; that had the lookout been properly manned and attending to his duties, he could have made the "L'Etruria" when she was at least forty to fifty feet distant; that the said Noe G. held her course and did not go to starboard after sighting the "L'Etruria," striking the "L'Etruria" on her port bow just forward of the chain-plates, breaking a large hole in said "L'Etruria," through which the sea entered so rapidly that within a few minutes after the collision, the said "L'Etruria" sank, together with her engines, tackle, apparel, furniture and provisions; that the gasoline power boat "L'Etruria," her engines, tackle, apparel, furniture and provisions were lost; that the said libellants were damaged, through the loss of the "L'Etruria," her engines, tackle, apparel, furniture, and provisions in the sum of twenty-five hundred dollars; that the "Noe G" was not damaged. [20]

[**Conclusions of Law.**]

CONCLUSIONS OF LAW FROM THE FOREGOING FACTS.

The Court finds:

1st.

That the "L'Etruria" was negligent in not blow-

ing her fog-horn, prior to the collision.

2d.

That the "Noe G" was negligent in not keeping a proper and sufficient lookout, and in not going to starboard when she sighted the "L'Etruria."

3d.

That the damages to the "L'Etruria," her engine, tackle, apparel, furniture and provisions should be born equally by the libellants and claimant.

4th.

That the libellants are entitled to recover from the claimant, *Onirite Chappi*, one-half of the damage suffered by the said libellants, to wit, the sum of twelve hundred and fifty dollars.

5th.

That each party pay the costs by said party incurred.

Dated this 30th day of April, A. D. 1915.

OSCAR A. TRIPPET,
Judge.

[Endorsed]: 367-Civil. In the District Court of the United States, in and for the Southern District of California. M. Costa, Joe H. Costa, and John Silva, Libellants, vs. The Gasoline Power Boat, "Noe G." Findings of Fact and Conclusions of Law. Rec'd Copy of within Findings, this 23 day of April, 1915, Crouch & Chambers. Filed Apr. 30, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. Marks P. Mossholder, and C. G. Selleck, Attorneys for Libellants, Room 5, 1st Natl Bank Bldg., San Diego, Calif. [21]

At a stated term of the District Court of the United States, for the Southern District of California, held at the courtroom in the Federal Building, in the City of San Diego, County of San Diego, State of California, on the 6th day of April, A. D. 1915. Present: Honorable OSCAR A. TRIPPET.

M. COSTA, JOE H. COSTA, and JOHN SILVA,
Libellants,

vs.

The Gasoline Power Boat, "NOE G."

Final Decree.

THIS CAUSE HAVING BEEN HEARD on the pleadings and proofs, and having been argued and submitted by the advocates of the respective parties, and due deliberation having been had;

IT IS ORDAINED, ADJUDGED AND DECREED by the Court that the libellants recover from the claimant the sum of Twelve Hundred Fifty Dollars, and that each party pay the costs by said party incurred.

DATED this 30th day of April, A. D. 1915.

OSCAR A. TRIPPET,
Judge.

Decree entered April 30, 1915.

WM. M. VAN DYKE,
Clerk.

By Leslie S. Colyer,
Deputy Clerk.

[Endorsed]: 367-Civ. In the District Court of the United States, in and for the Southern District

of California. M. Costa, Joe H. Costa, and John Silva, Libellants, vs. The Gasoline Power Boat, "Noe G," Final Decree. Filed Apr. 30, 1915, Wm M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. Rec'd copy of within decree this 21st day of April, 1915. Crouch & Chambers. By Chambers. Marks P. Mossholder and C. G. Selleck, Attorneys for Libellants, Room 5, 1st Nat'l. Bank Bldg., San Diego, Calif. [22]

[Exhibit "A"]

Mr. A

Mr. B

40 ft

[Endorsed]: 367-Civ. *N. Costa et al. vs. Gasoline Power Boat "Noe G"* Court's Exhibit "A." Filed Apr. 5, 1915. Wm. M. Van Dyke, Clerk. By T. F. Green, Deputy Clerk. [23]

[**Transcript of Testimony.**]

In the District Court of the United States, Southern District of California, Southern Division.

No. 367-CIVIL.

N. COSTA et al.,

Libellants,

vs.

Gasoline Power Boat, "NOE G."

Respondent.

San Diego, Cal., May 27, 1915.

It is hereby stipulated and agreed that this is a true and correct transcript of the testimony in the above-entitled cause.

MARKS P. MOSSHOLDER and
C. G. SELLECK,
Attorneys for Libellant.

CROUCH & CHAMBERS,
By CLAUDE L. CHAMBERS,
Attorneys for Respondent.

Filed June 1, 1915. Wm. M. Van Dyke, Clerk.
By Chas. N. Williams, Deputy Clerk. [24]

In the District Court of the United States, Southern District of California, Southern Division.

N. COSTA et al.,

Libellants,

vs.

Gasoline Power Boat, "NOE G."

Respondent.

San Diego, Cal., April 6th, 1915.

C. G. SELLECK, Proctor for Libellants.

CROUCH & CHAMBERS, Proctors for Respondent.

INDEX.

J. H. Costa.....	2
N. H. Costa.....	11
John T. Silva.....	18
Oscar Peuna.....	20
Dosa Peopela.....	30
Antonio Levaro.....	40
Noe Chappi.....	48
Gerald Brigante.....	55

[25]

L. OLIVER, sworn as interpreter, to interpret from Portuguese into English and English into Portuguese.

[Testimony of J. H. Costa, for Libellant.]

J. H. COSTA, called, sworn and examined on behalf of libellants, testified as follows:

Direct examination.

(By Mr. SELLECK.)

Q. What is your name? A. J. H. Costa.

(Testimony of J. H. Costa.)

Q. Where do you reside? A. San Diego.

Q. You are one of the owners of the gasoline power boat, "Letruria"? A. Yes, sir.

Q. You were on the "Letruria" on the morning of Tuesday, November 3d, 1914? A. Yes, sir.

Q. Where was the "Letruria" about 7:45 of that morning? A. Right below San Tomas.

Q. Off the Coast of Lower California?

A. Yes, sir, on the Mexican Coast.

Q. Who was on the "Letruria" besides yourself?

A. My brother, N. H. Costa and my partner John T. Silva.

Q. Who had charge of the boat at that time?

A. I was.

Q. What were you doing?

A. He says he was at the rudder.

Q. Where was N. Costa and John Silva?

A. They were down below lying down. [26]

Q. At about that time did the "Letruria" have a collision with any other boat?

The COURT.—That is admitted.

Q. About what time was it you first saw the "Noe G" on the morning of February 3d?

A. It was near eight o'clock, as near as I can remember.

Q. Where was the "Noe G" with reference to the "Letruria"?

A. He said he was going towards southeast, and the "Noe G" was coming towards the opposite way, towards Ensenada.

Q. Where was the "Noe G" with reference to the

(Testimony of J. H. Costa.)

“Letruria,” in front or one side?

A. He says it was coming right straight for him.

Q. How far apart were they when he saw it?

A. About 50 feet.

The COURT.—Was there a dense fog at that time?

A. Yes, sir.

Q. Did they have any lights, either boats?

A. It was daylight, but the lights were lit yet.

Q. Was there anybody else on deck, but him?

A. He was alone.

Q. When you first saw the “Noe G” what did you do, if anything?

A. I tried to turn to the right, the right-hand side.

Q. How far to the right did you turn? What is the trouble?

A. He says he was going south. I am trying to ask him what distance when he saw the “Noe G” what distance he went out of his course and he says he went south.

Q. Ask him how much to the right he went, not out of his course, but how much to the right he went?

A. He says at least 15 feet.

The COURT.—Went to the right 15 feet before he struck? A. He says about that. [27]

The COURT.—And what was aboard the “Letruria”?

A. He said there was ice and oil and provisions and clothing.

Q. Any nets aboard, after those six were taken off?

(Testimony of J. H. Costa.)

The COURT.—The things that went down with the ship.

A. Sixteen pieces of net.

Q. Went down with the ship?

A. Went down with the ship. He said he had eight and fourteen and six of them were saved, and sixteen must have been sunk.

Q. Do you know what the value of those nets was?

A. About \$300.

Q. What was the value of the ice?

A. About \$9.00 worth of ice.

Q. How about provisions? A. \$9.00.

Q. How about the clothing and wearing apparel?

A. He says his clothes were worth about \$25.

Q. What was the value of the oil?

A. He says he had 300 gallons.

The COURT.—You mean gasoline or oil?

A. Distillate, seven and a half a gallon. He said, six and a half or seven and a half, he isn't quite sure.

Q. Ask him if he knows what the value of the "Letruria" was at that time. A. \$2,700.

Q. What was the beam of the "Letruria," how wide?

A. She was 38 feet in the beam, and ten foot four wide.

Q. 38 feet long?

A. 38 feet on beam and ten foot four inches wide.

Q. What was the duct of her from the keel to the deck line?

A. He says he doesn't know, about four feet.

Q. What kind of an engine was in it? [28]

(Testimony of J. H. Costa.)

The COURT.—That is, he went 15 feet out of the course, is that what he means?

A. Yes, sir, he saw the boat and turned the rudder and he turned about 15 feet out of his course.

Q. Ask him if he put the wheel hard down and went to the starboard as far as he could.

Mr. CHAMBERS.—I object as leading.

The COURT.—That is all right, ask him the question.

A. Yes, he says he tried his best.

Q. Ask him whether or not he gave any signal.

A. He says he gave no signal, he had no time.

The COURT.—What did he have on the boat to give a signal with?

A. He said he had a whistle.

The COURT.—Couldn't he reach a whistle at the same time he put the helm over?

A. He says he couldn't.

Q. Was the whistle connected with the engine or a hand whistle blown by mouth?

A. He says he has both.

Q. Was the engine whistle connected up so he could do that?

A. Yes, sir, it was connected up.

Q. How far was it to reach for that engine cord or whistle?

A. He says he has to get out of the pilot-house to blow the whistle, that is all the time it takes.

Q. Ask him if he was keeping a close look out ahead before the accident.

A. Yes, sir.

(Testimony of J. H. Costa.)

The COURT.—I don't understand that. Could he handle the helm, put the helm over and blow the whistle at the same time, [29] whether it was so constructed that he could reach the whistle, blow the whistle, and throw the helm over?

INTERPRETER.—Without leaving the helm?

The COURT.—Without leaving the helm.

A. He said he could not.

The COURT.—How far was the whistle away from the helm?

A. About four feet.

The COURT.—So in order to blow the whistle, he had to leave the helm?

A. Yes, sir, so he says.

Q. Did he have a hand whistle in with him, right alongside of him, in the pilot-house?

A. He says, yes, sir, he had it right alongside of him, but he didn't blow it, because he gave all his attention to the helm.

Q. Ask him if he used both hands to throw that wheel hard down.

A. He could do better with both hands.

The COURT.—How long did it take him to turn the wheel over hard aport, how long did it take him to roll the wheel hard aport?

A. He says less than half a minute.

Q. How fast was the "Letruria" travelling?

A. He says about seven or seven and a half miles an hour.

Q. What is the speed of the "Letruria" when going full speed ahead?

(Testimony of J. H. Costa.)

A. About eight and three quarters.

Q. Did you hear any signal from the "Noe G"?

A. No, sir.

Q. Had you got the wheel hard apart before the "Noe G" struck the *Letruria*?" [30]

A. Yes, sir.

Q. How long before?

A. About a half a minute or less.

Q. You say you didn't hear any signal at all?

A. No sir, no signal whatever.

Q. Did any of the men holler at you?

A. He says they hollered when they struck him.

Q. Did the "Noe G" alter her course?

A. She came right for him.

Q. Did she alter her course at all either way, before she struck him?

A. He says on the left-hand side about four feet from the bow.

Q. On the left-hand side about four feet from the bow. Perhaps we could agree on that.

Mr. CHAMBERS.—I can't agree where it was struck.

Q. About how far from the chain-plates was that, that she struck? A. About four feet.

Q. About four feet from the chain-plates or the bow?

A. It is about three feet or three and one-half feet.

The COURT.—That is three and a half feet from the bow?

A. Four feet from the bow, he said in the first place.

(Testimony of J. H. Costa.)

The COURT.—How long was the “*Letruria*?”

A. 38 feet.

Q. State to the Court what happened after the collision. Ask him whether or not there was anything saved off the “*Letruria*”?

A. Only six pieces of net that were floated on the top of the water after the “*Letruria*” was sunk.

The COURT.—The “*Letruria*” filled with water and sank by reason of the collision?

A. Yes, sir. [31]

A. Standard.

Q. What size? A. 40 horse-power.

Q. Two cylinders? A. Two cylinders.

Q. Ask him if he knows the price of a 20 horse-power standard engine? A. \$1,200.

Q. Ask him about how old the “*Letruria*” was.

A. About four years.

Cross-examination.

(By Mr. CHAMBERS.)

Q. I believe you stated you were the only man on the deck of the boat.

The COURT.—He claims he was the only man on deck.

Q. Ask him if he had been sounding this whistle or horn before this accident occurred. A. No, sir.

Q. Ask him if he had been making any kind of signal to attract the attention of other boats before this accident occurred. A. No, sir.

The COURT.—Just address your questions to the witness.

Q. Did you have a conversation with Mr. Verdugo,

(Testimony of J. H. Costa.)

the commander of the Port of Ensenada, the night after this accident occurred, in the morning?

A. He said he had no conversation with him, but his brother did.

The COURT.—With whom is this?

Mr. CHAMBERS.—A Mr. M. Verdugo, the commander of the Port of Ensenada. [32]

The COURT.—This is the plaintiff?

Mr. CHAMBERS.—One of the plaintiffs.

The COURT.—You can ask him directly any statement he made.

Q. Are you fishing and working for Mr. Brigante of this city? A. Yes, sir.

Q. Did you have any conversation with Mr. Brigante after this accident occurred, in which you stated to him how it occurred?

A. He said he had no conversation, but he asked him for money that he owed him from the trip before.

The COURT.—What do you claim that this witness said to that man?

Mr. CHAMBERS.—I don't know that I claimed this one did. It was one or the other, but I want to find out.

Q. You had no conversation with Mr. Brigante in which you discussed how this accident occurred at all?

A. He said he couldn't converse with him as he don't understand him.

Q. At the time this accident occurred, as a matter of fact you were all three down below on that boat, were you not?

(Testimony of J. H. Costa.)

A. He says no, sir, he was on deck.

Q. From whom did you purchase the "Letruria"?

A. He says he bought from S. Massa, his share.

Q. What did you pay for it?

A. \$1,350 for his share.

Q. What share did you have? A. One-half.

Mr. CHAMBERS.—That is all.

The COURT.—How long ago did you buy it?

A. Two years ago. [33]

Q. Did you go forward on the "Letruria" after the accident and before she sank?

A. Yes, sir; he says he walked over to tie a rope to try to tow it, but everything was broken and he couldn't tie it.

Q. You are sure she was struck on the port bow?

A. Yes, sir.

The COURT.—Why did he say he couldn't tie it?

A. It was broken.

The COURT.—What was broken, the ship?

A. The ship, the bow.

[**Testimony of N. H. Costa, for Libellants.**]

N. H. COSTA, called, sworn and examined on behalf of libellants, testified as follows:

Direct Examination.

(By Mr. SELLECK.)

(R. Oliver, interpreter.)

Q. What is your name? A. N. H. Costa.

Q. You are one of the owners of the power boat "Letruria"? A. Yes, sir.

Q. What share did you own? A. One-fourth.

Q. Were you on the "Letruria" on the morning

(Testimony of N. H. Costa.)

of November 3d, 1914? A. Yes, sir.

Q. At the time of this collision, where were you?

A. He was down below.

Q. Did you come on deck after the collision?

A. Yes, sir, after the boat struck him.

Q. At the time the boat struck, were you awake or asleep? A. He was asleep. [34]

Q. Where were you sleeping?

A. He says he was down in the bunk below.

Q. On which side of the boat?

A. On the right-hand side.

Q. The bow or stern of the boat? A. The bow.

Q. When did you wake up, if you know?

A. He says he woke when the boat struck him.

The COURT.—You did not translate the oath to him. Translate it to him now.

(Oath translated to witness by interpreter.)

Q. Did you see where the “Noe G” struck the “Letruria” while you were below, before you came on deck?

A. He said before he came up he saw the boat was broken from the rail to the keel.

Q. On which side of the boat?

A. The left-hand side.

Q. You came on deck immediately after you woke, did you?

A. Yes, sir, as soon as the boat struck he came to deck.

Q. Did you look at the place where the “Noe G” struck the “Letruria” again after you came on deck?

A. Yes, sir.

(Testimony of N. H. Costa.)

Q. Are you sure you were struck on the port side?

A. He says yes, sir, he was on the right-hand side and looked to his left and saw the boat broken.

Q. Ask him what was aboard the boat at the time it sank, aboard the "Letruria."

A. He says it was the nets and the clothes and oil and ice, and \$104.85 in his clothes.

The COURT.—The clothes amounted to \$104.

A. The money he had in his clothes. [35]

The COURT.—And the clothes how much?

A. He says the clothes were only worth about \$10.

The COURT.—And how much money?

A. \$104.85.

Q. What else did he have personally?

A. Just the nets and the ice and the oil.

The COURT.—How much were the nets worth?

A. About \$300, the nets.

The COURT.—And ice?

A. Ice, \$9.00, and the oil, he said there was 300 gallons, he didn't know just exactly what it cost him.

Q. Ask him if he doesn't know what he paid for that before he went out?

A. He says he paid the bill, but he paid other bills together with it, and don't remember just exactly.

The COURT.—How much were the provisions?

A. About \$8 or \$9.

Q. Do you know what the value of the "Letruria" was at that time? A. He says \$2,700, \$2,750.

The COURT.—What did they pay for it?

A. He says he just bought it at that time and he paid \$1,350 for it.

(Testimony of N. H. Costa.)

Q. How long did he have it when she sank?

A. He said he had had it two months when it sank.

Q. The other fellow said he had had it two years.

A. This fellow bought his share along afterwards.

The COURT.—He bought his two months, and the other man is supposed to have had his two years.

Who did he get his half from?

A. He just bought one-fourth of the boat when he bought his two months before the “*Letruria*” sank. There was a half [36] sold for \$1,350, but he just purchased one-fourth.

Cross-examination.

(By Mr. CHAMBERS.)

Q. How much ice did you have on that boat?

A. He says ten blocks.

Q. How much did it cost you a block?

A. \$.90 a block.

Q. When did you buy it?

A. He says about the 2d of the month, the day before he left.

Q. How much oil did you buy? A. 300 gallons.

Q. How much of it had you used?

A. About 60 gallons.

Q. Bought 300 gallons when you left San Diego?

A. Yes, sir.

Q. And had used 60 gallons?

A. He says he used about 60 gallons until he lost the boat.

Q. How much did you have on it at the time the boat went *on*?

A. He says he don't know just exactly, but he went

(Testimony of N. H. Costa.)

from here down to San Midas, and as much as he knows he used about 60 gallons, and the rest was on the boat.

Q. You started out with 300 gallons, did you?

A. Yes, sir.

Q. Then, at the time the boat went down you would have had 240 gallons of oil on the boat?

A. He said more or less, he couldn't measure it.

Q. What provisions did you have on the boat?

A. He said he had milk and bread and meat and beans.

The COURT.—Coffee?

A. Coffee and sugar. [37]

Q. Did you purchase those provisions in San Diego? A. Yes, sir.

Q. What did you pay for the provisions in San Diego?

A. He says he purchased some of those provisions at Point Loma and some at *Boseville* across the bay, and he had other bills, that he paid them altogether, and don't know just exactly what he paid for them, but as near as he could figure it, it was \$9.00.

Q. \$9.00 worth of provisions he started out with?

A. Yes, sir.

Q. Had he used any of those provisions?

A. No, sir, he hadn't used any yet.

The COURT.—Where had he been to use 60 gallons of distillate, had he made any other trip between the time he got this 300 gallons of distillate, and prior to the collision?

A. They couldn't have used 60 gallons of distillate

(Testimony of N. H. Costa.)

going from here down there?

A. He said more or less.

The COURT.—Had they made some other trip?

A. He says that he bought the oil just before he left, and a powerful boat that way uses that much, as near as he can figure it.

The COURT.—60 gallons in going down there?

A. That is what he says.

The COURT.—How long had he been away from the port here?

A. He says he left 9:30 in the evening and ran until near eight o'clock the next morning.

The COURT.—Don't he mean six gallons instead of 60?

A. He is positively sure, he said 60.

Q. Ask him if he knows Mr. M. Verdugo?

A. He says he don't know anybody by the name.

[38]

Q. Ask him if he knows the commandant of the Port of Ensenada, Mexico? A. Yes, sir.

Q. Did you have a conversation on the night after this accident occurred, with Mr. Verdugo, the commandant of the Port of Ensenada? A. Yes, sir.

Q. Ask him if he made this statement to Mr. Verdugo, that they were coming in with a very heavy fog, and they were going south and the "Noe G." was coming south, and on the "Letruria" they were down in the hold, in the cabin, and they were so close they didn't know what happened, they were all down in the hold.

A. He said that he told the commandant they were

(Testimony of N. H. Costa.)

going down and the "Noe G." was coming up in a heavy fog, and he says they called him out of the hold, he says they didn't call him out of the hold, he was the one that hollered for them to help him out of the hold.

Q. Did you tell Mr. Verdugo, the commandant of the Port of Mexico, you would not claim anything from the "Noe G." because it was your fault that the accident occurred?

A. He said that he didn't say that, that he was down in the hold and he couldn't say that the fault was his, that he was sound asleep when the accident occurred.

Q. Did you have a conversation with Mr. Brigante, the man you fish for as to how this accident occurred?

A. He said he spoke to him but he didn't discuss how the accident happened.

Q. Did you make this statement to Mr. Brigante, "My brother was lighting a cigarette, and he was down in the hold"? A. No, sir. [39]

Q. Did you make this statement, it was our fault, the way it happened? A. No, sir.

Q. Did you say to him that you wished you had sunk with the boat? A. No, sir.

Redirect Examination.

(By Mr. SELLECK.)

Q. Do you speak Italian?

A. No.

Q. Do you speak English? A. Very little.

Q. This Mr. Brigante speaks Portugese?

A. He says he don't know, he says he understands

(Testimony of N. H. Costa.)

between the two, he can't talk Italian, and he don't know if Mr. Brigante can talk Portuguese or not.

Cross-examination.

(By Mr. CHAMBERS.)

Q. Have you had conversations with Mr. Brigante and talked with him?

A. No, sir, he says he had had no conversation with Mr. Brigante, especially.

Q. You had talked with Mr. Brigante about other subjects, had you not?

A. You mean before that?

Q. Any time.

A. He says, yes, sir, he had conversed with him at times.

[Testimony of John T. Silva, for Libellants.]

JOHN T. SILVA, called, sworn, and examined on behalf of Libellants, testified as follows: [40]

Direct Examination.

(By Mr. SELLECK.)

(L. Oliver acting as interpreter.)

Q. What is your name?

A. J. T. Silva.

Q. You are one of the owners of the gasoline power boat "Letruria"?

A. Yes, sir.

Q. What interest did you own?

A. One-fourth.

Q. Were you on the "Letruria" on the morning of November 3d, 1914?

A. Yes, sir.

Q. Where were you at the time of the accident?

A. Down in the hold.

(Testimony of John T. Silva.)

Q. (The COURT.) Was he asleep?

A. Yes, sir.

The COURT.—What side of the boat was he on?

A. He says he was on the right-hand side.

Q. In the bow? A. Yes, sir.

Q. Did he wake up right after the accident, after the collision?

A. Yes, sir, he says he woke when they struck.

Q. Did he see where they struck? A. Yes, sir.

Q. Where?

A. He says on the left-hand side of the boat.

Q. Whereabouts on the left-hand side?

A. He says about four feet from the bow.

Q. Ask him what was aboard the "Letruria" at the time she sank?

A. Ice and oil and provisions, and nets and clothing.

Q. How much ice? A. Ten blocks. [41]

Q. What was it worth, what did it cost?

A. \$9.00 for the ice. \$9.00 worth of provisions, \$300 worth of nets. His own clothes about \$10.

A. Ask him if he knows how much oil there was aboard? A. 300 gallons.

Q. Was any oil aboard at the time that 300 gallons was put in, here in San Diego?

A. He says they had very little.

The COURT.—How much did they have in, when they sank?

A. About 240 gallons when they sank, they used about 60 gallons.

The COURT.—Used 60 gallons where?

(Testimony of John T. Silva.)

A. From here down.

Q. How much distillate does that boat use an hour?

A. He says to go full speed, easily use about three and a half or four gallons an hour.

Q. Do you know what the value of the "Letruria" was at the time?

A. He says he bought his share, and the price was \$2,700, at the rate of \$2,700.

The COURT.—A fourth? A. Yes, sir.

Mr. CHAMBERS: No cross-examination.

EMUEL SADA, sworn as interpreter, to interpret from English into Italian and Italian into English.

[Testimony of Oscar Peuna, for Respondents.]

OSCAR PEUNA, called, sworn and examined on behalf of respondents, testified as follows:

Direct Examination.

(By Mr. CHAMBERS.)

Q. State your name? [42]

A. Oscar Peuna.

Q. Were you on board the "Noe G" on November 3d when this accident occurred? A. Yes, sir.

Q. What position on the boat did you have at that time?

A. I was working for this boat.

Q. What were you doing at the time this accident occurred? A. I was cleaning fish.

Q. What part of the boat were you on?

A. I was a-starboard, on the right.

Q. What time of the day was it?

A. Fifteen minutes after seven.

(Testimony of Oscar Peuna.)

Q. What kind of morning was it?

A. Very foggy.

Q. Did you see the "Letruria" before the accident occurred.

A. No, I didn't see the "Letruria." I seen the "Letruria" when the trouble first started.

Q. What was the first thing you saw?

A. The first I seen the boat, I heard my Captain say, "There is a boat to our front."

Q. How far away was the "Letruria" when you first saw it? A. About ten or fifteen feet.

The COURT.—Ten or fifteen feet?

A. When he saw it first.

The COURT.—Ten or fifteen feet apart?

A. Yes.

The COURT.—And who called his attention to it?

A. The man that was on watch.

The COURT.—What was his name?

A. Peo Pela. [43]

Q. What did he say?

A. "There is a boat in front of us, there is a boat in front of us."

The COURT.—They were only about ten feet away then?

A. Yes, sir, about ten or fifteen feet apart.

Q. Which way was the "Letruria" headed?

A. The "Letruria" was going south.

Q. Did the "Letruria" change her course after you first saw her? A. No, sir.

Q. Did you see anybody on the "Letruria" at that time? A. I didn't see nobody.

(Testimony of Oscar Peuna.)

Q. Did the "Noe G" have a whistle?

A. Yes, sir.

Q. Did she have a fog horn? A. Yes, sir.

Q. Do you know whether or not the *fog and* whistle had been blown before that time?

A. Yes, sir, we blew the whistle before getting together.

Q. How many times?

A. I couldn't say how many times, but we keep on blowing this whistle since we started up north.

The COURT.—When was the last time the whistle blew prior to the collision?

A. I blow the whistle before getting together.

Q. How long before they got together was the whistle blown? A. Less than half a minute.

Q. How long before the lookout told him there was a boat ahead, had they blown a whistle?

A. Just before, and in the meantime the lookout say, "There is a boat in front of us"! [44]

The COURT.—Just before?

A. Just before and at the time when the lookout say there was a boat in front of us.

The COURT.—The whistle was blown?

A. The whistle was blown.

The COURT.—And how long before that had the whistle blown?

A. Well, about two minutes or a minute and a half.

The COURT.—How far can you hear that whistle?

A. About two miles or two miles and a half.

The COURT.—Did they have lights on the "Noe G" at the time of the collision?

(Testimony of Oscar Peuna.)

A. It wasn't necessary to have a light.

The COURT.—I didn't ask if they thought it was necessary, I asked if they had?

A. No, they didn't have a light.

Mr. CHAMBERS.—Had you heard any horn or any whistle on the "Letruria" before the collision occurred?

The COURT.—They do not claim to have blown a whistle. There is no use asking about that. They made no noise at all.

Mr. CHAMBERS.—You may cross-examine.

Cross-examination.

(By Mr. SELLECK.)

Q. When you first saw the "Letruria," was it straight ahead of the "Noe G" if I understand you right? A. Yes, sir.

Q. Coming towards the "Noe G"?

A. Yes, towards the "Noe G."

Q. And about ten to fifteen feet away?

A. About ten or fifteen feet.

Q. After the lookout hollered, "There is a boat ahead," [45] or "a boat in front of us," did you hear any whistle on the "Noe G"?

A. Yes, sir.

Q. What was that whistle?

A. The steam whistle.

Q. How many times did she blow?

A. I can't tell, she blew from the time we started out north.

Q. How many times did it blow after you heard

(Testimony of Oscar Peuna.)

the lookout holler, "There is a boat ahead, or a boat in front," from that time until the boats struck, how many times did the whistle blow?

A. There was no time to blow any more whistle because it was too close. When we seen it it was only 15 feet until we got together.

Q. Did the "Noe G" alter its course from the time the lookout said there was a boat in front until the boats struck?

A. He couldn't change the course, it was too close, but he reversed the engine.

Q. They didn't change their course at all?

A. A little bit, but not much.

Q. Which way did they change their course?

A. Starboard.

The COURT.—Did he say they had changed their course?

A. They tried to, they changed the course a little but didn't change it much, it was too close. They had no time to change it.

Q. You did change the course a little to starboard, did you? A. Yes.

Q. And the "Letruria" did not change her course at all?

A. I don't think so, because I didn't see nobody on deck. [46]

Q. Will you explain to the Court how it came that if the "Noe G" changed her course to starboard, and the "Letruria" did not change her course at all, that the "Noe G" struck the "Letruria" instead of the "Letruria" striking the "Noe G"?

(Testimony of Oscar Peuna.)

The COURT.—I think that is argument, but go ahead.

A. The “*Letruria*” was coming towards her and there was a heavy sea and we had to hit her because the waves broke over to our side, there was a heavy sea coming, a heavy wave.

Q. Ask him if the waves that were running at that time would not throw his boat in-shore and away from the “*Noe G*” instead of towards the “*Noe G*”?

A. Perhaps you got the boats mixed.

Q. Ask him if the waves were not *stiking* the “*Noe G*” on the port side?

A. The wave was coming on our port, toward our port.

Q. Ask him under the conditions under which those two boats were, if that was not throwing the “*Noe G*” in towards shore and away from the “*Letruria*” at the time of the accident?

A. It couldn't go around because the heavy sea was coming and the “*Letruria*” was coming towards that. We reversed the engine so we couldn't avoid the collision at all, the way we were in the waves.

Q. Who was the lookout?

A. Peo Pela.

Q. Where was he stationed?

A. He was at the helm.

Q. There wasn't any lookout then any more than the helmsman, was there?

A. Yes, there were other people on deck. [47]

The COURT.—That is not the question. Was the helm in the front of the ship or the stern, the bow or

(Testimony of Oscar Peuna.)

stern? A. It was in the middle.

The COURT.—Did the lookout have hold of the helm? A. Yes, sir.

Q. Who was it hollered, “There is a boat in front”?

A. Peo Pela, the one who was directing the course.

The COURT.—I didn’t find out where the helm was on the other ship. We will recall the witness.

Q. Who was captain of the “Noe G”?

A. I was acting as captain at the moment.

Q. Ask him who was the captain, not who was acting as the captain. Who was the captain at the time of the accident, of the collision? A. I was .

Q. How long had you been captain of that boat?

A. A little over a month.

Q. You stationed Peo Pela at the wheel?

A. The owner of the boat placed Peo Pela at the helm, because he had to go and look after the engine.

Q. Where was the owner at the time of the collision?

A. He was down underneath, at the engine.

The COURT.—Where was this witness at the time of the collision?

INTERPRETER.—He is speaking Spanish and I speak Italian, and I can’t understand him, he speaks broken Italian and broken Spanish, and I have tried to do it both ways.

GEORGE COUTS, sworn as interpreter to interpret from English into Spanish and Spanish into English. [48]

The COURT.—Where were you at the time of the collision?

(Testimony of Oscar Peuna.)

A. About two feet behind the cabin, cleaning some fish.

The COURT.—Where was the cabin, what part of the boat? A. About midship of the boat.

The COURT.—He was then nearer to the stern than he was to the bow?

A. Yes, sir, nearer the stern.

The COURT.—Was the wheel midship?

A. About in the middle. Probably a little bit nearer the stern, but near the middle of the ship.

The COURT.—Who else was on deck besides the lookout and you? A. Antonio Levaro.

The COURT.—Where was he?

A. Just one side of the man that was steering the boat.

The COURT.—And he was standing near the wheel, what was he doing at the time?

A. I was cleaning fish. He was sounding the whistle and giving an alarm.

The COURT.—Go ahead.

Q. You say they had been sounding the fog-horn ever since the fog first settled down?

A. From the time we started, because it was foggy when we left.

Q. What kind of horn was it?

A. It was a steam whistle from the steam engine.

Q. How often was he sounding it?

A. In the neighborhood of two minutes or probably 2 minutes and a half.

Q. Did he have anything to go by?

A. No, I was cleaning fish, but the man that was

(Testimony of Oscar Peuna.)

managing that had a watch alongside of him.

Q. Did the fog continue after the collision?

A. For about an hour and a half afterwards. [49]

Q. You never blew the fog-horn the rest of the morning, did you?

A. No, sir, we were all very busy assisting the people that got wrecked.

Q. And never blew it again all morning, is that correct?

A. No. Soon after that it cleared up.

Q. The fog lasted for about an hour and a half, didn't it?

A. We were very busy trying to give assistance to the other boat, and helped save all we could, and we were working with them.

Q. Which side of the "Letruria" was struck by the "Noe G"?

A. On the left-hand side, on the southerly course.

Q. On the port side?

A. Yes, going toward the south.

Q. How fast was the "Noe G" travelling at the time of the collision, or just before the collision?

A. I can't exactly tell, how fast it was going, but it was going pretty fast.

Q. It was going full speed ahead, wasn't it?

A. I think so, but of course I couldn't tell, I was not aboard.

(Recess until 2 P. M.)

Q. The "Noe G" was going full speed ahead?

A. On account of the foggy weather, I should judge it was going about three miles and a half an hour.

(Testimony of Oscar Peuna.)

Q. What did you mean by saying awhile ago it was going ahead then?

A. I mean we reversed full speed, reverse when we seen the other boat, we reversed full speed back.

Q. Whereabouts is the reverse lever on the boat?

A. About amidship. [50]

Q. A helmsman, in order to reverse that boat, has got to reach down nearly to his ankles, doesn't he?

A. No, the lever stands about as high like this cane, you can reverse that forward and backward just from where you are standing.

Q. Don't the helmsman have to stoop over to reverse it? A. No, sir.

Q. Does the helmsman stand on a level with the engine?

A. Yes, he can steer the boat with one hand, the pilot can, and with the other hand he can reverse it.

Q. Does he stand on a level with the engine with his feet down level with the engine, or is it pretty well up on the deck?

A. The machinery is about a foot and a half or so from the level of the boat, and it is about two or three steps to go down to the machinery.

Q. How long is that reverse lever?

A. About three feet.

LOUIS SKERO, sworn as interpreter to interpret from Italian to English and English into Italian.

[**Testimony of Dosa Peo Pela, for Respondents.**]

DOSA PEO PELA, called, sworn and examined on behalf of respondents, testified as follows:

Direct Examination.

Q. Were you on the "Noe G" on the 3d day of November, 1913, when the accident occurred when the "Letruria" was sunk? A. Yes, sir.

Q. What time of day did this accident occur?

A. About 7:15 in the morning.

Q. What kind of a morning was it?

A. He says a high sea and pretty foggy. [51]

Q. Where were you on the boat at the time this accident occurred?

A. It was about three miles from San Jose.

Q. What part of the boat were you on at the time this accident occurred?

A. He said he was on the wheel.

Q. How long had you been at the wheel?

A. He says he was on the wheel about 12 or 15 minutes before that happened.

Q. What was your duties on the boat at that time besides being at the wheel, if any?

A. He says nothing else but on the wheel.

Q. Was it your duty to be on the look out?

A. Yes, sir.

Q. Did the "Noe G" have a whistle or horn on it?

A. He says they had a whistle, they used to blow three times every few minutes, and had another kind of horn to blow in case of foggy weather.

Q. Was the whistle being blown that morning?

A. Yes, sir.

(Testimony of Dosa Peo Pela.)

Q. Who blew the whistle?

A. He says he blows the whistle himself at first, and the other, *Antonia Levero* he says he was blowing the horn.

Q. When did you first see the “*Letruria*”?

A. He says I was about 40 feet when I saw it first, and he hollered that there was a boat ahead of them and he told the other fellow to reverse the engine at full speed.

Q. Did you see anybody on the “*Letruria*” when you first saw it?

A. He says not before they came to a collision. The only thing he saw after they come together, one from out from the cabin with a cigarette paper in his hand.

Q. What part of the boat did he come from? [52]

A. From the cabin of the boat, from his engine.

Q. Was he smoking that cigarette?

A. No, he was holding these papers in his hands to make cigarettes.

Q. Who was that man?

A. He says only he kenw by sight, it was the brother of the fellow that owned the boat.

The COURT.—Was it the first man on the witness-stand?

A. He says the first one that was on the witness-stand.

The COURT.—Point him out in the courtroom.

A. He says the second one from this side.

The COURT.—The one sitting in the middle?

A. Yes, sir.

(Testimony of Dosa Peo Pela.)

Q. Did he say anything when he came up there?

A. He says to the fellows on the boat, he told them when they come together, he says, one of the sailors said to the party who was the owner of the boat, that he had better go driving dogs, instead of running a boat, it would be better to run a dog instead of a boat.

Q. What did he say when you told him that?

A. He said, he start to cry and told him to save him, that they were going to sink to the bottom.

Q. Did the "Letruria" change its course after you saw them, when they were 40 feet away?

A. No, sir.

Q. Was that all the conversation you had that took place at that time?

A. No, sir. One thing we were looking to save the boat.

Q. Who was running the engine on your boat?

A. Mr. Noe. [53]

Q. Who was running the engine on the "Noe G" at that time?

A. He said Mr. Noe, the man who was fishing, the owner of the boat.

Q. Ask him if the gentleman is in the courtroom now. A. Yes, sir.

Q. Who is he, will you point him out? This gentleman here, Mr. Chappi? A. Yes, Chappi Noc.

Q. Noe Chappi. Did you say anything to Mr. Chappi when you saw the "Letruria" ahead of you?

A. He said as soon as I saw him, I saw the boat, I told Chappi to reverse the engine full speed.

Q. Did he reverse the engines? A. Yes.

(Testimony of Dosa Peo Pela.)

Q. What did you do, if anything, after the boats came together.

A. He says all there was. He tried to save the boat, and they were close, but they tied a rope to the "Letruria" and the "Noe G" to try to tow them to Ensenada.

Cross-examination.

(By Mr. SELLECK.)

Q. Whereabouts was the "Letruria" when you first saw her?

A. He said it was going south and they were going north.

Q. In front of the "Noe G," or on one side or the other of it? A. Straight ahead.

Q. Coming toward the "Noe G"? A. Yes, sir.

Q. How far away was the "Letruria" when you first saw her? A. About 40 feet.

Q. Are you sure about that? A. Yes. [54]

Q. If Mr. Peuna says that the "Letruria" was between 10 and 15 feet away when you first saw her, he was mistaken, wasn't he?

Mr. CHAMBERS.—We object that Mr. Peuna did not say that he was in the same position that this witness was.

The COURT.—Translate the question and ask it.

A. He says when I saw the boat it was about 40 feet, but to reverse the engine, and they were still going ahead when the rest of them saw it. Perhaps it was that time, when they saw it, but we saw it before anybody else saw it.

The COURT.—Did you say anything when you

(Testimony of Dosa Peo Pela.)

saw the ship ahead, when you saw the “*Letruria*”?

A. As soon as I saw the boat I ordered the “*Noe G*” to reverse the engine, and he said it wasn’t anywhere that they could give them any side, they were steering right straight, they were so close.

The COURT.—What did you do when you saw the “*Letruria*”?

A. He says I was hollering, “That boat is ahead of us,” to reverse the engine, and so they did, the other party on their boat, so they were going backwards, and their boat came ahead square on the bow without nobody was on the deck.

The COURT.—Was your boat going backward when the collision occurred? A. Yes, sir.

The COURT.—Do you mean that the engine was going backwards or the boat was going backwards?

A. He says that the engine was turning backwards and also the boat was going backwards.

The COURT.—The speed forward then was entirely stopped and the ship was moving back when the collision occurred? [55]

A. He says we were standing, we were going backwards when the other boat came right on us.

The COURT.—How far were your ships apart when your ship stopped going forward?

A. About fifteen feet, but the other boat was going at full speed.

The COURT.—How fast was your ship going when you saw the “*Letruria*”?

A. He said they were going at the lowest speed, from two miles to three miles an hour.

(Testimony of Dosa Peo Pela.)

The COURT.—How big is your ship, how long is it? A. 38 feet long.

The COURT.—How wide? A. About 10 feet.

The COURT.—How far would your ship move before you can stop it when it is going a mile an hour?

A. It could stop right away.

By Mr. SELLECK.—Was your boat loaded or empty?

A. It was just light loaded, a few fish.

Q. About how many fish, how many pounds?

A. From five to six hundred pounds of barracuda.

Q. When your boat was travelling at from the rate of from two to three miles an hour, how far could you go before you could get the boat stopped and started backwards?

A. He says that when the boat was at low speed, that he could stop right away.

Q. Do you mean when he would reverse, he would stop immediately without moving forward at all?

A. Yes, sir.

(By the COURT.)

Q. Who reversed the engine?

A. Mr. Chappi. [56]

Q. You could not reverse the engine yourself?

A. I could reverse the engine at the same time, but he was down in the engine-room and could do it quicker.

Q. As soon as you saw the ship ahead, you hollered to reverse the engine, ship ahead? A. Yes, sir.

Q. Did you change your course any?

A. When we started to go backwards, we couldn't

(Testimony of Dosa Peo Pela.)

have changed anyway.

Q. How far backwards did you go?

A. It was about a half a minute. The other boat came on top of it so fast.

Q. How many feet backward did you go?

A. He says from about twenty to thirty feet.

Q. It moved backwards?

A. From 20 to 30 feet.

Q. It moved backwards from 20 to 30 feet?

A. Yes, sir.

Q. Ask him again and see if he got that right?

A. Yes, sir, he was going at high speed backwards.

(By Mr. SELLECK.)

Q. Did you alter your course at all, or attempt to?

A. No, he was standing, he said he didn't change no course.

Q. Did you give any signal to the other boat?

A. No, he was going straight ahead.

(Question read.)

A. Yes, he says they blow the whistle, then they blow the horn.

Q. Was that after he saw the "Letruria" that he gave that signal? A. Before.

Q. Did he give any signal after he saw the "Letruria"?

A. He says he did blow the horn, but they were so excited in backing up the boat. [57]

Q. Who blew the horn?

A. He says the other sailors blew the horn.

Q. What sailor? A. Antonia Levaro.

Q. How many times did he blow it?

(Testimony of Dosa Peo Pela.)

A. He says in about a half a minute before they got together.

(Question read.)

A. He says they were blowing the horn right along before.

Q. Ask him how many times they blew that horn from the time he saw the "Letruria" until they struck?

A. He said they blew the horn quite often, but when they saw the "Letruria" it was too late, and they were excited and come together, there was no time to blow it.

The COURT.—Were you going backwards when you saw the man coming out of the hold of the "Letruria"?

A. I didn't see any of them on deck before they hit the ship, hit the "Noe G."

Q. The "Letruria" has got a pilot-house, hasn't she? A. Yes.

Q. You saw Costa come out of the pilot-house after the accident?

A. Yes, when they come together, he comes out of the pilot-house.

Q. He didn't come out from the cabin then, did he, he came out from the pilot-house?

A. He said as they were together he comes out of the engine-room or cabin, the pilot-house.

Q. Ask the question whether he tried to change his course or did change his course.

The COURT.—I think he said two or three times he did not, that they were going backwards, that he

(Testimony of Dosa Peo Pela.)

stopped the engine and started backwards. Did you change your helm at all? [58]

A. No, sir.

Q. You were very badly excited at the time you saw this "Letruria" ahead, weren't you?

A. No, sir.

Q. Why didn't you whistle to the "Letruria" then?

A. He says we were going back and they were going at full speed, it was so close they didn't have any time, they were blowing the whistle before that time.

Q. Why didn't you blow the whistle as soon as you saw them?

A. A few minutes before they see the "Letruria," they blow this whistle, but as soon as they did see it, he reversed the engine, the fellow that was in the engine-room, Noe Chappi, and he didn't see anybody on the other side, and if they reversed their engine they wouldn't be in collision at all.

Q. Ask him if he had put his wheel hard over to port and went to starboard, if he would not have cleared the "Letruria" entirely?

A. He said that it *was close* that he couldn't, it wouldn't do no good, it was too late.

Q. You had been blowing the fog-horn right along, had you, before the accident? A. Yes, sir.

Q. How often?

A. It was about every two minutes.

Q. What were you going by, did you have a watch there?

A. Yes, they have a clock always ahead of them, so they can see it right along.

(Testimony of Dosa Pco Pela.)

Q. Did you blow your fog-horn by that watch or clock? A. Yes, sir.

Q. After the accident, after the collision it remained foggy, didn't it? A. Yes, pretty deep fog.

Q. Did you continue to blow your fog-horn after the accident [59] until the fog cleared up?

Mr. CHAMBERS.—I object as incompetent, irrelevant and immaterial.

The COURT.—Sustained.

Mr. SELLECK.—That is all.

[**Testimony of Antonio Levaro, for Respondents.**]

ANTONIO LEVARO, called sworn and examined on behalf of respondents, testified as follows:

Direct Examination.

(By Mr. CHAMBERS.)

(Louis Skero acting as interpreter.)

Q. Were you on the gasoline power boat "Noe G" on the 3d day of November, 1914? A. Yes, sir.

Q. What were you doing?

A. He says he was on the deck.

Q. Were you on the boat at the time this accident occurred? A. Yes.

Q. What time of day was it? A. About 7:15.

Q. What kind of weather was it?

A. Pretty foggy.

Q. What were you doing on the boat?

A. They were handling the barracuda on the deck, and watching out for boats.

Q. Did the "Noe G" have a whistle?

A. Yes, sir, it was a fog-horn.

Q. Was that whistle being blown that morning?

(Testimony of Antonio Levaro.)

A. Yes, sir.

Q. Who was blowing this whistle?

A. The fellow that was on the wheel, he used to blow the whistle right along, and he used to blow the horn too right along.

Q. The fellow on the wheel blew the whistle, and he blew the horn? [60] A. Yes, sir.

Q. How often was this whistle blown that morning, you were going up there?

A. He says every two minutes.

Q. How far can you hear that whistle?

A. He thinks that they can hear them about a mile and a half or two miles off.

Q. How far did you hear the fog-horn?

A. A quarter of a mile or a half a mile or so.

Q. Where did you first see the "Letruria"?

A. He says about two or four miles to San Jose.

Q. You mean you were about two to four miles from San Jose when you first saw the "Letruria"?

A. He said just about.

Q. How far was the "Letruria" from the "Noe G." when you first saw it?

A. He said it was about 40 feet.

The COURT.—Who saw it first?

A. The fellow that was on the wheel.

The COURT.—What did he say?

A. He said he hollered loud there was a boat ahead of him.

The COURT.—Tell the words he said.

A. He was hollering aloud, "The boat is ahead, to reverse the engine."

(Testimony of Antonio Levaro.)

Q. The man at the wheel hollered there was a boat ahead, to reverse the engine? A. Yes.

Q. Who was running the engine at that time?

A. Noe Chappi.

Q. Did he reverse the engines?

A. Yes, sir, right away. [61]

Q. Was there anybody on the deck of the "Letruria" when you first was it? A. No, sir.

Q. When did you first see anybody on the deck of the "Letruria"?

A. He says when we got in collision and got together, that is the only time we see a fellow come out from the cabin with his cigarette paper in his hand.

Q. Who was that fellow?

A. That one in the middle.

Q. What is his name, do you know?

A. I don't know.

Q. He came out of the cabin after the two boats came together, rolling a cigarette? A. Yes, sir.

Q. Did he say anything at that time?

A. He says he didn't say nothing but I told him he ought to be managing a wagon or something or other, that he was no good at managing boats.

Q. What did he say when you told him that?

A. He said he didn't say nothing.

Q. How short a time before you saw the "Letruria," did the "Noe G" blow the whistle?

A. He says it was perhaps a minute or half a minute, he didn't know exactly, but they were whistling right along.

Q. Did anyone on the "Noe G" blow a whistle

(Testimony of Antonio Levaro.)

after you saw the "Letruria"? A. No, sir.

Q. Did anyone on the "Noe G" blow the fog-horn after you saw the "Letruria"?

A. They were blowing about a half a minute before they see him, but they came so close so quick, they didn't have no time.

Q. Did the "Letruria" change her course after you first saw her?

A. No, he said straight ahead without anybody on the deck.

The COURT.—Where were you standing with reference to the man at the wheel? [62]

A. He said he was standing about four feet from the man that was on the wheel.

Q. On which side?

A. The left side of the boat, the port side.

Q. Which way were you looking?

A. He said he was looking in every direction.

(By the COURT.)

Q. How comes it that you did not see the "Letruria" first?

A. He says that the man on the wheel saw it first.

Q. Was it plain to be seen when you saw it?

A. Not very well, it was so foggy.

Q. How far did the boat move after you saw it, before this man came out of the hold?

A. *It* says it was right close.

Q. How many feet were you from his ship when you saw him come out?

A. Ten to twelve feet.

Q. Did you holler at the ship, at the "Letruria"?

(Testimony of Antonio Levaro.)

A. He said he went right straight ahead with the boat to save the crew.

Q. Was this man rolling a cigarette when he came out, or just had the papers in his hand?

A. Only had his cigarette paper in his hand.

Q. Did he have any tobacco?

A. No, he couldn't say that, he couldn't see it.

Q. Did he have a package of cigarette papers or just one paper? A. One only.

Q. One piece of paper? A. One piece of paper.

Q. Were you going backwards then?

A. Yes, sir. [63]

Q. How long had you been going backwards when he came out of the hold?

A. He said the boat was pretty near standing still, it was about ten to twelve feet.

Q. Ten to twelve feet off from his boat, standing still? A. Pretty near still.

Q. The "Noe G"? A. Yes, sir.

Q. Your boat was standing still when you saw this man come out of the hold?

A. Yes, sir, it was standing still.

Q. Had you started back before it struck?

A. Yes, sir.

Q. How far back did you go?

A. He was from 12 to 15 feet, he can't tell exactly how much it was, but he thinks that much.

Q. Did your ship move backwards ten or fifteen feet before the ships came together?

A. He says his boat was going straight back, but we don't know how far he was.

(Testimony of Antonio Levaro.)

Q. Who owns the "Noe G"?

A. Noe Chappi.

Q. Is he in the courtroom?

A. Yes, the gentleman back there, talking.

Q. Are you working for him now? A. Yes.

Q. The man that was on the witness stand before, you were working for him also? A. Yes.

Cross-examination.

(By Mr. SELLECK.) [64]

Q. When you first saw the "Letruria," she was straight ahead of the "Noe G," was she?

A. Yes, sir.

Q. When you first saw her, was that before Mr. Peo Pela called there was a boat ahead, or afterwards?

A. It was the gentleman on the wheel that said it first.

Q. Was it before the man on the wheel called there was a boat ahead, or after, that he saw the "Letruria"?

A. He said the fellow on the wheel, Peo Pela, saw it first.

The COURT.—And called out, that is the way I understand his testimony.

Mr. SELLECK.—The question is whether he saw it before this man called out.

The COURT.—Did you see the ship before Peo Pela called out, "Ship ahead"?

A. Peo Pela saw it first.

The COURT.—Had Peo Pela said anything before you saw it?

(Testimony of Antonio Levaro.)

A. He hollered, "The boat is ahead; go full speed back," and they were all screaming.

Q. How fast was the "Noe G" travelling at the time you first saw the "Letruria"?

A. It was going about half speed, it was only about three miles an hour.

A. Going about half speed, is that correct?

A. He says he thinks it was just about half speed.

Q. How fast does the "Noe G" travel at full speed?

A. He says he doesn't know exactly; from six to seven miles.

Q. At the time you first saw the "Letruria," the "Noe G" was going more than two miles an hour, wasn't she?

A. We were going about three and a half miles an hour.

The COURT.—How fast was the "Letruria," going? [65]

A. He said he thinks he was going at full speed.

The COURT.—How many miles an hour?

A. He says that the boats were about even, they were making about seven miles an hour.

Q. Did you have any load on the "Noe G"?

A. We had about five to six hundred pounds of Barracuda.

Q. What distance does it take to stop the "Noe G" and start her travelling backwards, when the "Noe G" is travelling at the rate of three miles an hour?

(Testimony of Antonio Levaro.)

A. He said he could stop in less than half a minute.

Q. How much less than half a minute?

A. He says in about half a minute.

Q. It wasn't half a minute from the time you first saw the "Letruria" until they struck, was it?

A. The "Noe G" was going backwards at the time when they saw the boat, the "Letruria."

Q. Ask him how many feet ahead the "Noe G" went before she started backward from the time he reversed until she stopped and started backwards?

A. He said he didn't measure it.

Q. Ask him if he has got any idea of about how far they went.

A. He said he was going so slow that he started right backwards, going backwards right away.

Q. You did not go backward at all then after the reverse,—the boat started right backwards?

A. He said possibly he went four or five feet ahead and started to go backwards.

Q. Did the "Noe G" change her course at all from the time you first saw the "Letruria" until the two boats struck?

A. He said he was so close, we tried to save them, but we were too late. [66]

Q. Did they change their course?

A. He said it was too late; it was all we could do was to reverse the engine and go backwards.

Q. Did the "Letruria" change its course after you saw it? A. It was going straight ahead.

Q. You say you saw Costa come out of the cabin

(Testimony of Antonio Levaro.)

before the accident happened, before the collision?

A. No, just when they got together, when they were in collision.

Q. It was after they came together?

A. After the collision.

Q. He didn't come out of the cabin, did he, he came out of the pilot-house, didn't he?

A. He stated he came out from the cabin; the engine-room and cabin is all together.

Q. Ask him if the pilot-house isn't right there at the same place?

A. He says he came from the cabin, but that is all he knows.

Q. Do you mean to say there wasn't anybody at the wheel of the "Letruria"?

A. I couldn't say it, because I couldn't see it.

Q. You don't know whether there was or not, do you? A. No.

Mr. SELLECK.—That is all.

Mr. CHAMBERS.—Do you know where the wheel of the "Letruria" is?

A. He says it is down in the cabin, but he was never on the boat.

[**Testimony of Noe Chappi, for Respondents.**]

NOE CHAPPI, called, sworn and examined on behalf of respondents, testified as follows:

Direct Examination.

(By Mr. CHAMBERS.)

Q. Are you the owner of the "Noe G"?

A. Yes, sir. [67]

Q. Were you on the "Noe G" on the morning of

(Testimony of Noe Chappi.)

the 3d day of November, the morning they had the collision with the "Letruria"? A. Yes, sir.

Q. What time of the day was that?

A. 7:15 in the morning.

Q. What kind of a morning was it?

A. He said the sea was pretty rough and foggy weather.

Q. What were you doing that morning at the time of this accident?

A. He said he was in the engine-room, oiling up the engine, and the fellow was at the wheel; he hollered a boat was in ahead of him, to reverse the engine, so he reversed the engine at full speed.

Q. Who was the fellow who hollered for him to reverse the engine?

A. The man who was at the end,—Peo Pela.

Q. Did you reverse the engine?

A. He said as soon as he saw it, he reversed the engine right away.

Q. How fast was the "Noe G" travelling at the time he called out to you to reverse the engine?

A. About three miles.

Q. How far did the "Noe G" go after you reversed the engine and the boat stopped and started backwards? A. From five to six feet.

Q. At the time the collision occurred was the "Noe G" going backwards or ahead? A. Going back.

Q. Did you have a whistle on the "Noe G"?

A. A whistle and a horn. [68]

Q. Before this accident occurred, had this whistle been blown?

(Testimony of Noe Chappi.)

A. Yes, we were whistling every two minutes.

Q. Was the horn blown that morning before the accident occurred?

A. Yes, sir; they used the horn too.

Q. When did they use the horn?

A. He said they used it about as often as the whistle; they used the horn, too, as often as the whistle.

Q. You mean they used the whistle a part of the time and a horn part of the time?

A. Every once in a while one, and every once in a while the other.

Q. Whose duty was it to blow the whistle?

A. He said the man that was on the wheel blew the whistle, and the other fellow that blew the horn was beside the cabin, on the deck.

Q. How long before this collision occurred had this horn been blown? A. About half a minute.

Q. What was it was blown about half a minute, the whistle or the horn? A. The horn.

Q. How far can that horn be heard.

A. About a half a mile, maybe three-quarters of a mile.

Q. How far was the "Letruria" from the "Noe G" when you first saw it?

A. It was about from 30 to 40 feet.

Q. Could you see the "Letruria" from where you were working, from the engine-room?

A. He says as soon as the man on the wheel told me to reverse the engine, I did; I reversed the engine right away, and he jumped up so he could see, and he was about 30 feet off from the "Letruria."

(Testimony of Noe Chappi.)

Q. Did you see anybody on the "Letruria"?

A. Nobody on the deck. [69]

Q. Do you know where the wheel is on the "Letruria"?

A. He says the wheel stands on the "Letruria" like most boats, in the cabin, but they have got a kind of pilot-house on the top.

Q. Could you see whether there was anybody at the wheel of the "Letruria" from where you were?

A. He said he couldn't see no one; he said they had a glass, but if there was, he could see them.

Q. If there was anyone there, you could see them?

A. Yes.

Q. Was there anyone there at the wheel when you looked up? A. No, he didn't see nobody.

Q. When did you first see anybody on the "Letruria"?

A. When we came in collision he saw the fellow come down with a cigarette paper in his hand.

Q. What fellow was that, Mr. Costa?

A. The fellow in the center on the first seat.

Q. What did he say, if anything, when you first saw him? A. Nothing.

Q. Did you say anything to him?

A. No, he didn't say anything until the other sailors told him that it would be better to go and manage a wagon, instead of a boat.

Q. Who was the sailor told him he had better go manage a wagon instead of a boat?

A. Levaro Antonio.

Q. What did the man say, what did Mr. Costa say

(Testimony of Noe Chappi.)

when Levaro told him he had better go manage a wagon instead of a boat?

A. He didn't say nothing.

Q. What did this man do when he came up on the deck of the "Letruria"? [70]

A. He said he just came out and was hollering, but he didn't say anything what to do, but was kind of excited.

Q. How long was it before you saw any one else besides this man on the "Letruria"?

A. He says when he got in collision one came out without a hat and the other one without shoes, on top of the deck.

Q. They came out after Mr. Costa came out?

A. Yes.

Q. You reported this accident to the commandant at Ensenada, did you, after it occurred that night?

A. Yes, sir.

Q. Was Mr. Costa there at the time?

A. He said he went before the harbormaster, whatever they call him, of Ensenada, with Costa together, to report about the accident.

Q. Was the man you went before at Ensenada, Mr. Verdugo? A. Yes, sir.

(By the COURT.)

Q. Who did you first see on the "Letruria"?

A. The man that was on the wheel saw him first.

Q. What man on the "Letruria" did he see first,—did he see anybody on the "Letruria"?

A. He said he didn't see no one on the deck or any where on the boat before we got in collision.

(Testimony of Noe Chappi.)

Q. Was it after the boat struck that he saw him?

A. When they get in collision. This one came with the cigarette paper and the other two came right after.

Q. The fellow that had the cigarette paper, was he fully dressed? A. Yes, sir. [71]

Q. Was he rolling a cigarette?

A. All we see was a cigarette paper.

Q. How many pieces of paper did he have?

A. Only one.

Q. Did he have any tobacco?

A. No, he didn't see no tobacco.

Q. How far back did your boat go after you reversed?

A. He says the boat was going backwards. Perhaps we went backward from 15 to 20 feet.

Q. Were you the engineer? A. Yes.

Q. How long had you been down at the engine?

A. He said it was about six or seven minutes. He said he went to oil up the engine.

Q. Can they reverse the engine from on deck where the wheel is? A. Yes, sir.

Q. How far is the engine from the door of the cabin?

A. About two feet distance from the wheel to the engine.

Q. How far would he have to go from the engine back to where he could get out of the cabin, out of the engine-room?

A. He says about three stairs from the engine-room to the deck.

(Testimony of Noe Chappi.)

Q. Come right straight up? A. Yes, sir.

Q. You did not have to go toward the stern any to come up?

A. No, sir; you come straight up from the engine-room.

Q. When you got out and saw the ship, did you think they were thirty feet apart? A. About 20.

Q. Were you still going backwards?

A. He says we were going so slow when I reversed the engine, we were going backwards when I got out on the deck. [72]

Q. When you got out on the deck, you were going backwards? A. Yes, sir.

Q. You were going backwards at full speed?

A. Yes, sir.

Q. You were going forward on slow speed?

A. We were going at first slow from two miles and a half to 3 miles.

Q. How fast were you going backward when the collision occurred?

A. He says they can't tell the speed going backward, but the average the boat goes 6 miles an hour or seven.

Q. How big a hole did you make in the other ship?

A. I didn't have a chance to see, but I saw where the boat came to us, and the hole was pretty low; he couldn't say how big the hole was.

Q. That is to say, the "Letruria" was on top of their ship?

A. They came on top with a kind of a high sea, and the hole was quite low below the water line.

(Testimony of Noe Chappi.)

Q. How far from the bow of the "Letruria" was the hole?

A. He says we were about a foot and a half of two feet from the bow.

Q. Was the hole big enough for a man to crawl in?

A. We didn't see the hole?

Q. You didn't see the hole at all? A. No, sir.

Q. Were the ships going that way?

(Handing witness Exhibit "A.")

A. He said they were going on their course; their boat comes right over and hit on the side of the bow, but pretty low, that he didn't see the hole. He said they were going just about as they stand now, but when I back up where the back was, it would [73] bring the bow to the left, and they came right square on us at full speed; he says there was high water and rough water. There was rough water and when I back up it brings the bow to the left, but they come with such high speed that the side of their boat hit pretty high on their boat, on the left side.

Q. As they were going backwards, they swung this "Noe G" to the left, swung the bow around to the left?

A. Yes, that is what he said, that he thinks he did.

The COURT.—Do you want this marked, either of you?

Mr. CHAMBERS.—No objection.

The COURT.—Mark it Court's Exhibit "A."

[**Testimony of Gerald Brigante, for Respondents.**]

GERALD BRIGANTE, called, sworn and examined on behalf of respondents, testified as follows:

Direct Examination.

(By Mr. CHAMBERS.)

Q. What is your business? A. Fish dealer.

Q. Were the Costa boys fishing for you on the 3d day of November, 1914? A. Yes, sir.

Q. Do you know anything about this accident which occurred between the power boats "Noe G" and the "Letruria"?

A. Yes, I know after Mr. Costa came in.

Q. Did you have a conversation with the Costas as to how this happened? A. Yes, sir.

Q. When was that?

A. It was about seven or eight, or eight or nine days after.

Q. After the accident? A. Yes, sir. [74]

Q. Where did this conversation take place?

A. At the Jorres wharf.

Q. Is that where your fish market is?

A. No, sir; my fish market is on Atlantic street between F and G.

Q. What was that conversation? Just state to the Court what they said to you and what you said to them with reference to how this accident occurred.

The COURT.—Which one did you talk to, both of them?

A. No; just one of the Costa brothers.

Q. Which one? A. It was Joe Costa.

Q. The one sitting on the end?

(Testimony of Gerald Brigante.)

A. Yes, the second one from the inside.

Q. The one sitting in the middle of the four?

A. Of those four, the second one from the inside.

Q. What did he say?

A. At this time when I see him, I was very sorry because it was one of my fishing boats, and I was very sorry when I heard of that happening, and I saw him and asked him how that happened to come out and he says to me, "Well, I don't know myself, but the only thing is, I wish I had sunk with the boat myself," and I say, "Why?" and he says, "I wish I sunk myself with the boat." And I said, "What is the reason?" and he said, "I was in the boat sleeping when it came," and I said, "There was nobody on top of the deck?" And he said, "Me, and the other fellow was sleeping and my brother, he was down at the engine, and making a cigarette for himself." And he didn't give me any much information, but he said, "That is our fault."

Q. He stated to you at that time there was no one on the deck of the "Letruria."

A. He said there was nobody on the deck.

Q. What was it he said about his brother rolling this cigarette? [75]

A. He said, "My brother was down in the hold, making a cigarette for himself," that is all he said. He didn't give me any of the other information at all.

Q. You are very well acquainted with this "Letruria," this boat?

A. I know this man very well, and I know this

(Testimony of Gerald Brigante.)

fellow a little over four or five years; he been fishing for me before that time.

Q. You have known this "Letruria," the boat, for four or five years?

A. No, I know the boat for about three years.

Q. Do you know what that boat is worth, or was worth?

A. I don't know what that boat was worth, but I know what the engine was worth, but I don't know about the boat.

Q. Did you ever sell this particular engine that was in this boat? A. Yes, sir.

Q. When was that?

A. It was about three years.

Q. About three years ago? A. Yes, sir.

Q. And what was the price of that engine at the time you sold it? A. \$1150.

Q. That was about three years ago?

A. About three years ago.

Q. Was the engine new at that time?

A. It was brand new.

Q. Do you know what it would cost to build that boat?

A. I don't know anything about it. I can't tell you what it cost a boat at all. I haven't got no idea at all.

Cross-examination.

(By Mr. SELLECK.)

Q. Did you speak Portuguese? [76]

A. I didn't speak it very well, but I understand it very well.

(Testimony of Gerald Brigante.)

Q. You did understand it well, you say?

A. Sure! I have been, from these people on the wharf, and been talking with them once in a while one word in Portuguese and one word in English and one word in Spanish, but I can understand every word those people say when they talk to me.

Q. Does the "Noe G" fish for you now?

A. No, sir.

Q. You say that N. Costa, the second one from this end, told you that his brother was down in the hold making a cigarette? A. Yes, sir.

Q. He also told you he was asleep? A. Yes, sir.

Q. Did he explain to you how he knew his brother was? A. Yes, sir.

Q. What did he say?

A. I said, "Did you see that, the boat 'Noe G,' when she came against you?" And he said, "No, I was below sleeping." I said, "Who was on guard when that came?" He said, "My brother was on the *road*," but he said, "Just that minute he was in the hold making a cigarette for himself," and that is all, and he says, to me, "Well, I see the man was very sorry," and he says, "I wish I sunk with the boat myself." He means to say that he was very sorry. He didn't say nothing else.

Q. Have you ever *have* any trouble with the Costas? A. Never.

Q. They are not fishing for you now? A. No.

Q. They are fishing at the present time?

A. Yes, after they lost the boat they didn't be fishing any more.

(Testimony of Gerald Brigante.)

Q. You say that engine sold for \$1150?

A. Yes, that is the price the engine costs. [77]

Mr. SELLECK.—That is all.

The COURT.—Did you ever run any of those boats?

A. Never. I have been running a sail boat. I have been fisherman myself for about 15 years, but never run any power boat.

Mr. CHAMBERS.—The Costa boys were fishing for you on the 3d of November, when this accident happened? A. Yes, sir.

The COURT.—What are you—a Spaniard?

A. I am an Italian, born in Genoa. I have been in this country 28 years, and have been a citizen for 21 years past.

[**Testimony of Melcades Verdugo, for Respondents.**]

MELCADES VERDUGO, called, sworn and examined on behalf of respondents, testified as follows:
(GEORGE COUTS acting as interpreter.)

Direct Examination.

(By Mr. CHAMBERS.)

Q. What was your occupation on the 3d day of November, 1914?

A. I was commander of the port.

Q. What port? A. Ensenada.

Q. Was there a report made of an accident which took place between the “Noe G.” and and the “Letruria,” made to you on the 3d day of November?

A. Yes; the captain of each one of the two vessels

(Testimony of Melcades Verdugo.)

arrived at my house about eight o'clock,—in the neighborhood of eight o'clock.

Q. At your house in Ensenada? A. Yes, sir.

Q. Do you know the name of these two gentlemen who came to your house? [78]

A. I know Mr. Costa, captain of the "Letruria."

Q. Which Mr. Costa was that?

A. The second gentleman in the front seat there.

Q. Did Mr. Costa make a statement to you at that time as to how this accident happened?

A. At first when they made the report to me, I asked them the distance from shore and they said it was about a mile and a half from the shore. Being under the jurisdiction of the Mexican courts, he asked Mr. Costa to wait until to-morrow, that he would investigate the case, and let him know to-morrow what can be done about it, but then Mr. Costa told me that we had better let it go then, "It was all my fault; the accident was my fault, and I don't want to bother with it any more," and went away.

Q. Did Mr. Costa say anything about why it was his fault? A. Some of his crew was asleep.

Q. Did he say anything about whether there was anyone on the look out or at the wheel or not?

A. No; he didn't say anything about that.

Q. Did you have any other conversation with him the following morning?

A. No, they left there that night, and being they were the parties interested in it, and didn't want to make any more complaint about it, they dropped it

(Testimony of Melcades Verdugo.)

right there, so I didn't investigate it any further.

The COURT.—Is there any controversy about the jurisdiction.

Mr. SELLECK.—They admit the jurisdiction of this court.

The COURT.—This collision occurred on the high seas, there is no controversy about that?

Mr. CHAMBERS.—They allege in the libel that this occurred three miles from shore; we deny that and say that it occurred a mile and a half from shore.

Q. Who told you at that time the collision occurred a mile and a half from shore? [79]

A. The two captains, Mr. Oscar and Mr. Costa, I asked them in particular, because if it came in the jurisdiction of the courts, I would take it up for them. If it didn't I wouldn't have anything more to do with it at all.

Q. Did Mr. Costa state to you that you should make a report exonerating the crew of the "Noe G"?

A. No; seeing that he was the complaining witness and I would have to investigate the case for him before I could make any report, so there was no report made of it at all, I would have to make a report first and then take it up with the courts, in the Superior Court.

Q. Did he make any statements to you about the first he knew about this accident, they were so close that he didn't know what did happen?

A. Yes, sir, because it was very foggy.

Q. Did he make a statement to you that they were all down in the hold of the boat?

(Testimony of Melcades Verdugo.)

A. Yes, it was their fault.

By the COURT.—That was not the question. What did Costa say about the crew on the “Letruria” being on deck or in the hold?

A. He said they were asleep and naturally they would have been down in the hold.

Q. Did Costa say they were all down in the hold or did he infer that?

A. His language was they were asleep.

Q. Did he say his brother was asleep?

A. No; he didn't say his brother.

Q. Did he say anything about the captain,—that is his brother, isn't it,—did he say anything about his brother being away from [80] the wheel at the time of the collision?

A. Yes, they said it was their fault, and of course, I took it for granted.

Q. That is not the question, did Costa say whether his brother was at the wheel at the time of the collision? A. No, he didn't say that.

Q. Did he talk with Costa, the Captain of the “Letruria”?

A. Yes, sir.

Q. What did he say?

A. They went there to make a complaint, as I stated, and then telling me also it was their own fault.

Q. That is not the question. Tell us what Captain Costa said?

A. He told me that the boats had collided, had a collision.

Q. Did he go to his place to make a complaint

(Testimony of Melcades Verdugo.)

about the other boat?

A. No, they just went there to make a report, not to make any complaint about it, but to make a report to me about it.

The COURT.—Go ahead.

Cross-examination.

(By Mr. SELLECK.)

Q. Which one of the Costas was it that you talked with?

A. The gentleman that was acting as captain at the time.

Q. The one on the end or next to the end?

A. The second one.

Q. Did you talk to the man on this end at all?

A. No, he was there also, but I just got the statement from the other one.

Q. Did he have an interpreter there?

Q. What little Spanish they spoke I understood it.

Q. They did not talk very much Spanish, did they? [81]

A. No, but just what they told me I could understand it very plain.

Q. The man who came with *costa* there, the Captain of the other boat, was a Mexican, wasn't he?

A. Yes, sir.

Q. A great friend of yours, wasn't he?

A. I just know him in a business way, when they go back and forth in boats like the other captain.

Q. As a matter of fact wasn't it Oscar Peopela that told you that it was Costa's fault and not Costa himself? A. No, they told me themselves.

(Testimony of Melcades Verdugo.)

Q. *Who* do you refer to by “They”?

A. I asked the two of them together, and then Costa spoke up and said it was our fault, it was very foggy.

Mr. CHAMBERS.—Defendant rests.

[**Testimony of M. Costa, for Libellants (Recalled).**]

M. COSTA, recalled on behalf of libellants, testified as follows:

(L. OLIVER acting as interpreter.)

Direct Examination.

(By Mr. SELLECK.)

Q. Did you understand what Mr. Brigante said while he was on the stand here?

A. He said he understood a little.

Q. Did you ever tell Mr. Brigante that your brother was down in the engine-room making a cigarette at the time of this accident? A. No, sir.

Q. Did you tell the Mexican commander of the Port at Ensenada that it was your fault that this accident happened?

A. He said he didn't tell him. In fact he didn't know, that he was asleep and had been asleep for half an hour and he didn't know whose fault it was
[82]

Q. Ask him if he told the commander down there that. A. He says, no, sir.

Q. Did you go to the commander of the port to make any complaint?

A. No, sir. He said when he went to the commander of the port it was just, it was to sign a dis-

(Testimony of M. Costa.)

patch so they could come back. He had to sign a dispatch so as to come back to San Diego.

Q. Was there anything said between you and the commander of the port about this accident there?

A. He said he had lost a boat.

Q. Whereabouts is the pilot-house on the "Letru-
ria?"

A. He said it is right over the engine-room.

Q. About whereabouts in the boat, in the middle of the boat?

A. He says it is about midship, a little towards the bow.

The COURT.—Did you tell the man at the Port at Ensenada that it was the fault of your brother?

A. No, sir.

Cross-examination.

(By Mr. SELLECK.)

Q. You did not have any conversation with the commander of the port at all as to how this accident occurred?

A. He said that the only conversation he had with him, that he just told him that he had lost a boat and how it happened, and the commander told him he had better wait until the next day so he could investigate what he could do for him, and he told the commander he would if he would give him a place to sleep, and a meal, he couldn't stay there without anything to eat or any place to sleep.

Q. He did make a report to the commander then that the boat had been lost and how the accident occurred?

(Testimony of M. Costa.)

A. No, sir, he didn't go there with that purpose at all, it was just to sign a dispatch to come to San Diego [83]

Q. What kind of dispatch were you going to sign?

A. He said it was just to sign their names to the dispatch and the other boats to bring them to San Diego.

Q. There wasn't any conversation took place there at all as to how the accident occurred?

A. Just that they had had a collision and had lost a boat, was all.

Q. No question asked about whose fault it was?

A. No, sir.

Q. Why did the commandant ask you to stay there until the next day, so he could investigate it?

A. He said he just went to him on account of this dispatch, and he told him that another higher officer above him, he couldn't state the name, asked him to stay so he could investigate.

Q. And he asked him to give him a bed and a meal so he could stay over until the next day?

The COURT.—You needn't ask him that, he said that.

Q. Did you stay over until the next day?

A. No, sir, he came home the same night on the "Panama."

The COURT.—How came this ship to go into Ensenada, was this beyond Ensenada or this side of Ensenada?

Mr. SELLECK.—It was on the other side of Ensenada.

(Testimony of M. Costa.)

The COURT.—Are you going to follow up the question of jurisdiction?

Mr. CHAMBERS.—We haven't admitted the jurisdiction of this court any more than we filed an answer and denied we were three miles out of shore. They have to prove their allegations. It is not our place to prove their allegations.

Mr. SELLECK.—Ask Mr. Costa how far out to sea the accident happened. [84]

A. He said he didn't know how far it was, he had been asleep for half an hour and didn't know.

The COURT.—Ask the other Costa how far they were out to sea?

A. He said it was a heavy fog, but as near as he could say more or less it was about two miles and a half.

[Testimony of Harry McDrugal, for Libellants.]

HARRY McDRUGAL, called, sworn and examined on behalf of libellants, testified as follows:

Direct Examination.

(By Mr. SELLECK.)

Q. What is your name? A. Harry McDrugal.

Q. What is your business? A. Fish merchant.

Q. Are you acquainted with gasoline power boats?

A. Yes, sir.

Q. Have you ever handled them?

A. I have got an engineer's license, and worked in boat-houses for three years.

Q. How long have you been handling and been working around boats?

A. Ever since I was 18 years old.

(Testimony of Harry McDrugal.)

Q. How long is that? A. I am 31 now.

Q. Are you acquainted with the "Noe G"?

A. Yes, sir.

Q. Will you state to the Court how far a boat of the size of the "Noe G," with an engine like the "Noe G" has in it, would go before it could be stopped when she was reversed full speed back, when she was travelling in the neighborhood of three miles an hour at the time she was reversed.

A. I don't think it could be stopped in less than two boat lengths. [85]

(By the COURT.)

Q. Suppose it were only going a mile an hour forward, how long would it take to stop her by reversing the engine?

A. I don't think she could stop in her distance.

Q. In her length? A. Yes, sir.

Q. That would be 30 feet? A. About 30 feet.

Q. How long would it take to get her started backwards?

A. When a boat is running half speed, you can't throw her wide open and run her full speed right in a second, you have to go down and reach a lever, speed her up, and then throw her.

Q. When they reversed the engine to stop her, wouldn't she naturally go right backward as soon as she got stopped? A. Why, sure.

The COURT.—Go ahead.

(By Mr. SELLECK.)

Q. Are you familiar with the values of boats?

A. Yes, sir.

(Testimony of Harry McDrugal.)

Q. Are you acquainted with the "Letruria"?

A. Yes, sir.

Q. State to the Court what the market value of the "Letruria" was at the time of the collision?

A. It was worth, I was present when she was sold, the bill of sale was made, \$2,750. That was about two months after.

The COURT.—I don't believe that question is disputed. They did not offer any evidence as to that.

Cross-examination.

(By Mr. CHAMBERS.)

Q. Did you ever run the engine on the "Noe G" or any boat of this size, out in the water? [86]

A. I have run a boat, a little bigger and the same size.

Q. Have you ever met another boat and immediately reversed your engine to see how quickly you could stop it?

A. I have done it in the boat-house a good many times.

Q. Have you ever done it out in the ocean when the waves were rolling? A. Yes, sir.

Q. When was that?

A. When I was fishing.

Q. You mean to say you have reversed an engine on a boat when you were out in the ocean fishing?

A. When the boats are trawling you have got to reverse lots of times.

Q. You mean you have reversed at full speed back?

A. Throw it out quickly when there is danger.

Q. Did you ever meet any other boat when you have done that?

(Testimony of Harry McDrugal.)

A. I don't say that, I say that any boat you can't stop no boat in less than two lengths of the boat at half speed.

Q. Did you ever try it?

A. I have tried it and I know.

Q. Reverse it at full speed reverse?

A. Yes, sir, a boat going half speed you can't stop it in less than two lengths of the boat.

Q. You were friendly with the Costa boys?

A. I am.

Q. And have been friendly with them for a long time? A. I am.

Mr. SELLECK.—Plaintiff rests. [87]

*In the District Court of the United States of
America, in and for the Southern District of
California.*

M. COSTA, JOE H. COSTA, and JOHN SILVA,
Libellants,

vs.

Gasoline Power Boat "NOE G,"

Libellee.

Notice of Appeal.

Sirs:

Take notice that Onirato Chappi, owner of the gasoline boat "Noe G" hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the decree entered herein April —, 1915.

Dated San Diego, California, May 3d, 1915.

Yours, etc.,

CROUCH & CHAMBERS,

Proctors for Appellant.

To C. G. Selleck, W. J. Mossholder, Marks P. Mossholder, and Rusk P. Mossholder, Proctors for Libellants.

William M. Van Dyke, Esquire, Clerk of the District Court of the United States of America, in and for the Southern District of California.

[Endorsed]: Original. No. 367-Civil. In the District Court of the United States of America, in and for the Southern District of California. M. Costa, et al., Libellants, vs. Gasoline Power Boat, Noe G, Libelee. Notice of Appeal. Received copy of the within Notice of Appeal this 5th day of May, 1915. C. G. Selleck & Marks P. Mossholder, Proctors for Libellants. Filed May 8, 1915. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Crouch and Chambers, Proctors for Appellant. [88]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

M. COSTA, JOE H. COSTA, and JOHN SILVA,

Libellants and Respondents,

vs.

Gasoline Power Boat "NOE G," ONERATA
CHAPPI,

Claimant and Appellant.

Petition [for Appeal].

To the Honorable United States Circuit Court of Appeals for the Ninth Circuit.

The petition of Onerata Chappi, the appellant herein, respectfully shows as follows:

I.

That on or about the 10th day of February, 1915, the libellants filed a libel in the District Court of the United States of America in and for the Southern District of California against the above-named gasoline power boat, "Noe G," in a cause in admiralty to recover the sum of Two Thousand, Eight Hundred and Fifty Dollars (\$2,850) alleged to be due the libellants from said gasoline power boat, with interest and costs as by reference to said libel will more fully appear.

II.

That on or about the 20th day of February, 1915, Onerata Chappi filed an affidavit of ownership of said gasoline power boat, "Noe G"; that on or about the 26th day of February, 1915, Onerata Chappi, the owner of said gasoline power boat, duly appeared and filed his answer to said libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear. [89]

III.

That on or about the 6th day of April, 1915, said cause came on for hearing before the Honorable Oscar A. Trippet, Judge of said District Court. That on the 9th day of April, 1915, a final decree was made and entered in said suit whereby it was adjudged

that the libellants have judgment against said Onerata Chappi for the sum of Twelve Hundred and Fifty Dollars (\$1,250) and that each party herein pay the costs by said party incurred.

IV.

The above-named Onerata Chappi, owner of said gasoline power boat, "Noe G," and the appellant herein, is advised and insists that said final decree is erroneous in that the evidence introduced in said cause shows that the collision upon which this action is founded was directly caused by the carelessness and negligence on the part of the libellants herein, and that said gasoline power boat, "Noe G," and her owners and operators, were not negligent and that said action was in no wise the fault of said gasoline power boat, or her owners or operators.

V.

For this and other reasons, the above-named owner and appellant appeals from said final decree to the United States Circuit Court of Appeals for the Ninth Circuit and on said appeal intends to ask a new decision on the law and on the facts upon the pleadings and proofs in said District Court, and prays that the records and proceedings aforesaid may be returned to the United States Circuit Court of Appeals for the Ninth Circuit, and that said decree may be reversed, and that it be decreed that libellants take nothing by their said libel and that appellant have judgment for his costs in the District Court and in this court.

Dated, San Diego, California, May 29th, 1915.

CROUCH & CHAMBERS,

Proctors for Appellant. [90]

[Endorsed]: Original. No. 367-Civil. In the United States Circuit Court of Appeals for the Ninth Circuit. M. Costa, Joe H. Costa, and John Silva, Libellants and Respondents, vs. Gasoline Power Boat "Noe G," Onerata Chappi, Claimant and Appellant. Petition. Filed Jun. 1, 1915. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Crouch and Chambers, Proctors for Appellant. [91]

*In the District Court of the United States of America,
in and for the Southern District of California.*

M. COSTA, JOE H. COSTA and JOHN SILVA,
Libellants and Respondents,

vs.

Gasoline Power Boat "NOE G," and ONERATA
CHAPPI, Owner,

Appellant.

Bond.

KNOW ALL MEN BY THESE PRESENTS: That we, Onerata Chappi as principal and Virgil Bruschi and G. Bregante as sureties, all of the city of San Diego, county of San Diego, State of California, are held and firmly bound unto the above-named M. Costa, Joe H. Costa and John Silva for the sum of Two Hundred and Fifty Dollars (\$250) to be paid to the said M. Costa, Joe H. Costa and John Silva for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 19th day of May, in the year of

our Lord, one thousand nine hundred and fifteen.

WHEREAS, the above-named Onerata Chappi has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree rendered in the above-entitled suit by the Judge of the District Court of the United States of America in and for the Southern District of California.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Onerata Chappi shall prosecute said appeal to effect and answer all damages and costs if he failed to make said appeal good, then this obligation shall be void, [92] otherwise the same shall be and remain in full force and virtue.

ONERATA CHAPPI.
VIRGIL BRUSCHI.
G. BREGANTE.

Sealed and delivered and taken and acknowledged this 19 day of May, 1915.

[Seal] CLAUDE L. CHAMBERS,
Notary Public in and for the County of San Diego,
State of California.

Approved by

OSCAR A. TRIPPET,
Judge.

[Endorsed]: Original 367-Civ. In the District Court of the United States of America, in and for the Southern District of California. M. Costa, Joe H. Costa, and John Silva, Libellants and Respondents, vs. Gasoline Power Boat "Noe G," and Onerata

Chappi, Owner, Appellants. Bond. Copy of Written Bond Received and Approved this 20th Day of May, 1915. Marks P. Mossholder, C. G. Selleck, Proctors for Libellants. Filed May 22, 1915. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Crouch and Chambers, Attys. for Appellant. [93]

In the United States Circuit Court of Appeals for the Ninth Circuit.

M. COSTA, JOE H. COSTA and JOHN SILVA,
 Libellants and Respondents,
 vs.

Gasoline Power Boat "NOE G," ONERATA
 CHAPPI,
 Claimant and Appellant.

Assignment of Error.

And now comes Onerata Chappi, owner and claimant gasoline power boat "Noe G," appellant, and makes and files this, his assignment of error.

First. That the Court for the Southern District of California erred in not rendering judgment for the defendant on the pleadings in said cause.

Second. That the Court erred in rendering judgment for the plaintiff on the facts found.

Third. That the findings of fact are insufficient to support the judgment.

Fourth. It appears that the judgment aforesaid, in form aforesaid given, was given for M. Costa, Joe H. Costa and John Silva, libellants, against the said gasoline power boat "Noe G," whereas by reason of

the law, the said judgment ought to have been given for the said Onerata Chappi, owner and claimant of the said gasoline power boat "Noe G."

Fifth. That it was conclusively shown by the evidence that the libellants below have no cause of action.

Sixth. That the evidence is wholly insufficient to sustain any findings of negligence on the part of the owners or operators of the libelled gasoline power boat "Noe G," at or before the happening of the collision.

CROUCH & CHAMBERS,

Attorneys for Claimant and Appellant, 505-506
Watts Bldg., San Diego, California. [94]

[Endorsed]: Original. No. 367-Civil. In the United States Circuit Court of Appeals for the Ninth Circuit. M. Costa, Joe H. Costa and John Silva, Libellants and Respondents, vs. Gasoline Power Boat "Noe G," Onerata Chappi, Claimant and Appellant. Assignment of Error. Filed Jun. 1, 1915. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Crouch and Chambers, Attorneys for Claimant and Appellant. [95]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 367-CIV.

M. COSTA et al.,

Libellants,

vs.

The Gasoline Launch, "NOE G," etc.,

Respondents.

Praeipce [for Transcript of Record on Appeal].

To the Clerk of said Court.

Sir: Please issue Transcript of Record on Appeal in the above-entitled action, to contain copies of the following papers and orders, viz.:

1. Statement of Proceedings;
2. Libel;
3. Affidavit of Ownership;
4. Answer to Libel;
5. Minute Order Amending Libel;
6. Findings of Fact and Conclusions of Law;
7. Final Decree;
8. Exhibit "A";
9. Transcript of Testimony;
10. Notice of Appeal;
11. Petition for Appeal;
12. Bond on Appeal;
13. Assignments of Error; and
14. Praeipce for Preparation of Transcript of Record on Appeal;

said Transcript of Record to be duly certified under the hand [96] of the clerk and the seal of the court.

CROUCH & CHAMBERS.

By CHAMBERS,
Proctor for Appellant.

[Endorsed]: No. 367-Civil. United States District Court Southern District of California, Southern Division. N. Costa et al. vs. Gasoline Launch "Noe G," etc. Praeipce for Preparation of Transcript of

Record on Appeal. Filed Nov. 20, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk.
[97]

[**Certificate of Clerk U. S. District Court to
Transcript of Record.**]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 367-CIV.—S. D.

M. COSTA, JOE H. COSTA and JOHN SILVA,
Libellants,

vs.

Gasoline Power Boat "NOE G,"

Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing ninety-seven (97) typewritten pages, numbered from 1 to 97, inclusive, to be a full, true and correct copy of the Libel, Affidavit of Ownership, Answer, Minute Order Amending Libel, Findings of Fact and Conclusions of Law, Final Decree, Exhibit "A," Transcript of Testimony, Notice of Appeal, Petition for Appeal, Bond on Appeal, Assignments of Error, and Praecipe for Preparation of Transcript in the above and therein-entitled cause, and that the same, together with the Statement made up in pursuance of rule four of the rules in admiralty of the United States Circuit Court of Appeals for the Ninth Cir-

cuit, constitute the Apostles upon the Appeal of Onirato Chappi herein, in accordance with the said rule four of the rules in admiralty of the United States Circuit Court [98] of Appeals for the Ninth Circuit, and with the Praeceptum for Preparation of Transcript filed in my office on behalf of the appellant by his proctor of record.

I DO FURTHER CERTIFY, that the cost of the foregoing Apostles on Appeal is \$48.20, the amount whereof has been paid me by Onirato Chappi, the appellant.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court of the United States of America, in and for the Southern District of California, Southern Division, this 23d day of November, in the year of our Lord, one thousand nine hundred and fifteen, and of our Independence the one hundred and fortieth.

[Seal]

WM. M. VAN DYKE,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By Leslie S. Colyer,
Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Canceled 11/23/15. L. S. C.] [99]

[Endorsed]: No. 2689. United States Circuit Court of Appeals for the Ninth Circuit. Onerato Chappi, Owner of the Gasoline Boat "Noe G," Appellant, vs. M. Costa, Joe H. Costa and John Silva,

Appellees. Apostles on Appeal. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed November 29, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

[**Order Granting Appellant 60 Days' Additional
Time to File Apostles on Appeal.**]

*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

ONERATO CHAPPI,

Claimant, Appellant,

vs.

M. COSTA, JOE H. COSTA and JOHN SILVA,
Appellees.

Good cause appearing therefor, it is hereby ordered that said appellant may have and is hereby given sixty (60) days from and after the expiration of the time given therefor by rule 5 of rules in admiralty, United States Circuit Court of Appeals for the Ninth Circuit, within which time to file the apostles in the above-entitled proceeding in the clerk's office of said Court of Appeals.

Dated this 7th day of June, 1915.

OSCAR A. TRIPPET,
Judge.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Onerato Chappi vs. M. Costa et al. Order Extending Time to File Record. Filed Sep. 7, 1915. F. D. Monckton, Clerk.

[Order Granting Appellant 60 Days' Additional Time to File Apostles on Appeal.]

In the United States Circuit Court of Appeals for the Ninth Circuit.

ONERATO CHAPPI,

Claimant, Appellant,

vs.

M. COSTA, JOE H. COSTA and JOHN SILVA,
Appellees.

Good cause appearing therefor, it is hereby ordered that said appellant may have and is hereby given sixty (60) days from and after the expiration of the time heretofore given, within which to file the apostles in the above-entitled proceeding in the clerk's office of the United States Circuit Court of Appeals, for the Ninth Circuit.

Los Angeles, California, July 31st, 1915.

OSCAR A. TRIPPET,

United States District Judge, Southern District of California.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Onerato Chappi vs. M. Costa et al. Order Extending Time to File Record. Filed Sep. 7, 1915. F. D. Monckton, Clerk.

[Order Granting Appellant 60 Days' Additional
Time to File Apostles on Appeal.]

*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

ONERATO CHAPPI,

Claimant, Appellant,

vs.

M. COSTA, JOE H. COSTA and JOHN SILVA,
Appellees.

Good cause appearing therefor, it is hereby ordered that said appellant may have and is hereby given sixty (60) days from and after the expiration of the time heretofore given, within which to file the apostles in the above-entitled proceeding in the clerk's office of the United States Circuit Court of Appeals, for the Ninth Circuit.

Los Angeles, California, Sept. 29, 1915.

OSCAR A. TRIPPET,

Judge.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Onerato Chappi, Appellant, vs. M. Costa et al., Appellees. Order Extending Time to File Record. Filed Oct. 7, 1915. F. D. Monckton, Clerk.

No. 2689. United States Circuit Court of Appeals for the Ninth Circuit. Three Orders Under Rule 16 Enlarging Time to Nov. 29, 1915, to File Record Thereof and to Docket Case. Refiled Nov. 29, 1915. F. D. Monckton, Clerk.

